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AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY DEPUTY

WILLIAM D. HYSLOP
H. E. STILES, II
LUKINS & ANNIS, P.S.
1600 Washington Trust Financial Center
West 717 Sprague
Spokane, Washington 99204-0466
(509) 455-9555

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

et al
~~W'S, INC., d/b/a Bill's Pharmacy,~~
~~A & H STORES, INC., d/b/a A & H~~
~~Pharmacy #1, A & H Pharmacy #2,~~
~~A & H Pharmacy #3, A & H Pharmacy~~
~~#4, A & H Pharmacy #6, and A & H~~
~~Pharmacy #7, AAA PRESCRIPTION~~
~~SVC, INC., d/b/a Odell's Prescription~~
~~Pharmacy, ALLENMORE PHARMACY,~~
~~INC., d/b/a Allenmore Pharmacy, Puget~~
~~Sound Pharmacy, and Kanner Pharmacy;~~
~~RICHARD D. ANDERSON, d/b/a~~
~~A & D Pharmacy, MICHAEL J.~~
~~BAKULA, d/b/a Pallor Pharmacy,~~
~~BATTLE GROUND PHARMACY, INC.;~~
~~STANLEY BERDINKA, d/b/a Family~~
~~Pharmacy of Auburn, PIZZINIS DONAT~~
~~PHARMACY, INC.; ESCHKE~~
~~GOLDWELL, d/b/a Tacoma Medical~~
~~Center Pharmacy, CAPITOL~~
~~PHARMACY, INC., CARSON DRUGS.~~

NO. C94-1767 *DW*

FIRST AMENDED
COMPLAINT ADDING
ADDITIONAL PLAINTIFFS
AND DuPONT MERCK
PHARMACEUTICAL
COMPANY AS DEFENDANT

FIRST AMENDED COMPLAINT ADDING
ADDITIONAL PLAINTIFFS AND
DuPONT MERCK PHARMACEUTICAL
COMPANY AS DEFENDANT: 1
P4362EJA.HES-F010495

LAW OFFICES
LUKINS & ANNIS
A PROFESSIONAL SERVICE CORPORATION
1600 WASHINGTON TRUST FINANCIAL CENTER
717 WEST SPRAGUE AVENUE
SPOKANE, WASHINGTON 99204-0466
(509) 455-9555

1 ~~INC.; CASTLE ROCK PHARMACY,~~)
 2 ~~INC.; CHEWELAH PHARMACY, INC.,~~)
 3 ~~d/b/a Platteau Pharmacy; CITY DRUG~~)
 4 ~~CO. INC.; BILL CLARKE, d/b/a~~)
 5 ~~Clarke's Drugs; WAYNE L. CLEMENS,~~)
 6 ~~d/b/a The Medicine Shoppe; GARY R.~~)
 7 ~~CORNELL, d/b/a Cornell's Valley~~)
 8 Pharmacy; COST PLUS)
 9 PRESCRIPTIONS, INC., d/b/a Cost Plus)
 10 Prescription Stores I, II and III;)
 11 COUGHLIN ENTERPRISES, INC.,)
 12 d/b/a The Medicine Shoppe;)
 13 COVINGTON PHARMACY, INC., d/b/a)
 14 Covington Pharmacy and Covington)
 15 Pharmacy at Meeker; D & R THOMAS,)
 16 INC., d/b/a Moses Lake Clinic Pharmacy;)
 17 DANIELSON & HANSON, INC., d/b/a)
 18 Green & Jackson Drug and M & R Drug;)
 19 DICK'S PHARMACY, INC.; DONALD)
 20 F. DOWNING, d/b/a Capitol Square)
 21 Pharmacy; MICHAEL J. DONOHUE,)
 22 d/b/a Bob Johnson's Pharmacy; DRIVE-)
 23 IN PHARMACY, INC.; DALE C.)
 24 DUSKIN, d/b/a Arlington Pharmacy,)
 25 Cumulus Park Pharmacy, and QuilCeda)
 26 Pharmacy; EDGEWOOD PHARMACY,)
 27 INC.; EFSCO PRESCRIPTIONS, INC.,)
 28 d/b/a Stowell's Puget Sound Pharmacy)
 29 and Stowell's Allenmore Pharmacy;)
 30 FAIRWOOD PHARMACY, INC.;)
 31 FAMILY DRUGSTORE, INC., d/b/a)
 Tieton Village Drug; FAMILY)
 PHARMACY, INC.; FAULKNER'S)
 PHARMACY, INC.; FERNDALE)
 PHARMACY, INC., d/b/a Ferndale Drug)
 Co.; FIFE DRUG, INC., d/b/a Fife)
 United Drug; FORSTROM)
 PHARMACEUTICALS, LTD., d/b/a)

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 COMPANY AS DEFENDANT: 2

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1 Central Drug & Gifts; GIBBONS)
 2 PHARMACY, INC.; ARTHUR E.)
 3 GODFREY, d/b/a Godfrey's Pharmacy;)
 4 HALPIN'S, INC., d/b/a Halpin's)
 5 Pharmacy; HERBISON'S PHARMACY,)
 6 INC.; HOREN'S DRUGSTORE, INC.;)
 7 J & J PHARMACY, INC., d/b/a J & J)
 8 Pharmacy and Johnson's Prescription)
 9 Pharmacy; JONES LOW PRICED)
 10 DRUGS, INC., d/b/a Jones Pharmacy I)
 11 and Jones Pharmacy II; K.K.& R., INC.,)
 12 d/b/a A & H Pharmacy, Family Center)
 13 Pharmacy, Heart Institute Pharmacy,)
 14 Miller & Felt Pharmacy, People's)
 15 Pharmacy #4, People's Pharmacy #6,)
 16 Professional Center Pharmacy, Shadle)
 17 Park Pharmacy, and South Center)
 18 Pharmacy; PAUL KAMINSKI, d/b/a)
 19 Darrington Pharmacy; BEVERLY ANN)
 20 KATTERMAN, d/b/a Katterman's Sand)
 21 Point Pharmacy; KELLEY-ROSS, INC.,)
 22 d/b/a Kelley-Ross Pharmacy; KEN'S)
 23 PHARMACY, INC., d/b/a Ken's)
 24 Pharmacy & Gifts; LOPEZ ISLAND)
 25 PHARMACY, INC.; BARRY D.)
 26 LAFFERTY, d/b/a Barry Lafferty's Rx)
 27 Pharmacy; LAKE HILLS DRUG, INC.;)
 28 LAKESIDE DRUG COMPANY, INC.;)
 29 LAKESIDE MERCER DRUG, INC.;)
 30 RICHARD J. LARSON, d/b/a Oroville)
 31 Pharmacy; LONGVIEW)
 APOTHECARIES, INC., d/b/a)
 Monticello Apothecary and Medical Arts)
 Apothecary; LOOKS MERCER ISLAND)
 PHARMACY, INC.; GERALD E. LUST,)
 d/b/a Gerry's Pharmacy; MARK-IT)
 PHARMACY, INC., d/b/a Medical)
 Center Pharmacy; MIKE GRAEFF'S)

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1 EASTSIDE DRUGS, INC., d/b/a Mike's)
2 Eastside Drugs; MEDI-SERV, INC.,)
3 d/b/a Medical Service Pharmacy;)
4 RANDY MENTZER, d/b/a RANDY'S)
5 PRESCRIPTION CENTER; MILL)
6 CREEK PHARMACY, INC.;)
7 DONALD W. MURRAY and)
8 DONALD N. ELLISTON, a partnership,)
9 d/b/a Wenatchee Clinic Pharmacy;)
10 NEWPORT HILLS DRUGS, INC.;)
11 NICHOLSON'S PHARMACY, INC.,)
12 d/b/a Bonney Lake Pharmacy and)
13 Nicholson's Pharmacy; W. MARK)
14 NORRIS, d/b/a Beall's Pharmacy;)
15 NORTH PINES PHARMACY, INC.,)
16 d/b/a The Medicine Shoppe; OLYMPIC)
17 DRUG, INC.; OLYMPIC DRUGS, INC.;)
18 OSTRANDER'S DRUG, INC.;)
19 OTHELLO DRUG, INC., d/b/a Othello)
20 Rexall Drug Co.; PECKENPAUGH)
21 DRUG CO., INC.; PRESCRIPTIONS,)
22 ETC., INC., d/b/a Bellegrove Pharmacy;)
23 PROFESSIONAL MALL PHARMACY,)
24 INC., d/b/a Professional Mall Pharmacy)
25 and Sid's Professional Pharmacy;)
26 QUINCY DRUG CO., INC., d/b/a Call)
27 Drug; ROBERT and MARY)
28 REDMOND, d/b/a Valley Mission)
29 Homecare; RONALD ROFFLER, d/b/a)
30 McCleary Pharmacy; SALLADAY'S)
31 STANDARD PHARMACY, INC.; MARK)
SALLANDER, d/b/a Mark's Pharmacy;)
SAV-ON DRUGS, INC.; 78TH STREET)
PHARMACY, INC., d/b/a Hall's)
Pharmacy; SILVER LAKE PHARMACY,)
INC.; SKAGIT VALLEY MEDICAL)
CENTER PHARMACY, INC;)
DENNIS A. SMITH, d/b/a Apothecary)

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1 Shoppe Pharmacy; LLOYD D. SMITH,)
 2 d/b/a Zillah Drug Store; SOUNDVIEW)
 3 PHARMACY, INC.; STANDARD)
 4 DRUG, INC.; GEORGE S. STIMAC,)
 5 d/b/a Market Street Pharmacy; ADELE)
 6 TAVIS, d/b/a Rochester Drug & Variety;)
 7 THE KOHOUT CO., d/b/a Kohout's)
 8 Rose Hill Pharmacy and Lakeview)
 9 Medical Pharmacy; TIDYMAN'S, INC.,)
 10 d/b/a Tidyman's Pharmacy #7, Tidyman's)
 11 Pharmacy #10, Tidyman's Pharmacy #12,)
 12 and Tidyman's Pharmacy #15; WENG,)
 13 INC., d/b/a Wayne's Rx Pharmacy;)
 14 BRUCE L. WHERRY, d/b/a Barton's)
 15 Center Pharmacy; WHIDBEY ISLAND)
 16 DRUG CO., INC., d/b/a Island Drug;)
 17 WIND RIVER PHARMACY, INC.;)
 18 STUART J. ZIMMERMAN, d/b/a)
 19 University Pharmacy; BOND)
 20 ENTERPRISES, INC., d/b/a Olympic)
 21 Pharmacy; BRAD-ROAD)
 22 CORPORATION d/b/a Medicine Chest)
 23 Pharmacy; CAMMACK'S PHARMACY,)
 24 INC., d/b/a Jim's Pharmacy and Home)
 25 Health; CASCADE PHARMACY, INC.;)
 26 WILLIAM R. COLEMAN, d/b/a Red)
 27 Cross Drug Store; COLTON)
 28 PHARMACIES, INC., d/b/a Colton)
 29 Pharmacy (Morton, WA), Colton)
 30 Pharmacy (Eatonville, WA), and Colton)
 31 Pharmacy (Winlock, WA); COST LESS)
 PRESCRIPTIONS, INC.; DAVENPORT)
 PHARMACY, INC., d/b/a Davenport)
 Pharmacy; RICHARD DAVIDSON,)
 d/b/a Evergreen Drug Center; DEL)
 PALACIO CORP. d/b/a Riverton Family)
 Pharmacy; TIM DRISCOLL d/b/a Tekoa)
 Pharmacy; GIG HARBOR PHARMACY,)

*Add fr
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FIRST AMENDED COMPLAINT ADDING
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 DuPONT MERCK PHARMACEUTICAL
 COMPANY AS DEFENDANT: 5

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1 INC., d/b/a Gig Harbor Rexall; HALL'S)
 2 DRUG STORE, INC., d/b/a Hall's Drug)
 3 Center and Hall's Medical Center)
 4 Pharmacy; HARBOR DRUG, INC.; TOM)
 5 HUTTULA, d/b/a Elma Pharmacy;)
 6 ROBIN E. JOHANSEN, d/b/a Fairhaven)
 7 Pharmacy; MARK JOHNSON, d/b/a Tick)
 8 Klock Drug; K-C PHARMACY, INC.; K.)
 9 A. OLSEN, INC., d/b/a Olsen's Valu-Rite)
 10 Drug; KRELL APOTHECARY, INC.,)
 11 d/b/a North Campus Pharmacy;)
 12 LINCOLN COUNTY PHARMACY,)
 13 INC., d/b/a Lincoln County United Drug;)
 14 LUKE'S PHARMACY, INC.;)
 15 MANHATTAN PHARMACY, INC.;)
 16 MALCOLM T. MORRIS, d/b/a White)
 17 Center Pharmacy; MR. LUCKY)
 18 ENTERPRISES, INC., d/b/a Sidie)
 19 Pharmacy; BLAYNE V. MYHRE, d/b/a)
 20 White Cross Pharmacy; PROFESSIONAL)
 21 CENTER PHARMACY, INC.; SAUDER)
 22 AND SAUDER, INC., d/b/a Steve's)
 23 Clinic Pharmacy; CONNIE SHAFER,)
 24 d/b/a Fifth Avenue Prescription; STEVE)
 25 SHAW, d/b/a North Kitsap Medical)
 26 Center Pharmacy; PATRICK L.)
 27 SWANSON, d/b/a Swanson's Save-Rite)
 28 Pharmacy; TWIN HARBOR DRUG,)
 29 INC.; VASHON PHARMACY, INC.;)
 30 WILLAPA HARBOR PHARMACIES,)
 31 INC., d/b/a South Bend Pharmacy; and)
 WOODINVILLE MEDICAL CENTER)
 PHARMACY, INC.,)

Plaintiffs,

vs.

FIRST AMENDED COMPLAINT ADDING
 ADDITIONAL PLAINTIFFS AND
 DuPONT MERCK PHARMACEUTICAL
 COMPANY AS DEFENDANT: 6

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1 ABBOTT LABORATORIES;)
 2 AMERICAN CYANAMID COMPANY;)
 3 AMERICAN HOME PRODUCTS)
 4 CORPORATION; BOEHRINGER)
 5 INGELHEIM PHARMACEUTICALS,)
 6 INC.; BRISTOL-MYERS SQUIBB)
 7 COMPANY; BURROUGHS)
 8 WELLCOME CO.; CIBA-GEIGY)
 9 CORPORATION; THE DuPONT)
 10 MERCK PHARMACEUTICAL)
 11 COMPANY; ELI LILLY & COMPANY;)
 12 FOREST LABORATORIES, INC.; G. D.)
 13 SEARLE & COMPANY; GLAXO, INC.;)
 14 HOFFMAN-LaROCHE, INC.; KNOLL)
 15 PHARMACEUTICAL COMPANY;)
 16 JOHNSON & JOHNSON; MARION)
 17 MERRELL DOW, INC.; MERCK & CO.,)
 18 INC.; PFIZER, INC.; PURDUE)
 19 FREDERICK COMPANY; RHONE-)
 20 POULENC RORER)
 21 PHARMACEUTICALS, INC.; SANDOZ)
 22 PHARMACEUTICAL CORP.;)
 23 SCHERING-PLOUGH CORPORATION;)
 24 THE SCHERING CORPORATION;)
 25 SMITHKLINE BEECHAM)
 26 CORPORATION; THE UPJOHN)
 27 COMPANY; WARNER-LAMBERT)
 28 COMPANY; ZENECA, INC.; MEDCO)
 29 CONTAINMENT SERVICES, INC.;)
 30 CAREMARK, INC.; and J. C. PENNEY)
 31 COMPANY, INC., d/b/a Express)
 Pharmacy Services,)

Defendants.)

FIRST AMENDED COMPLAINT ADDING
 ADDITIONAL PLAINTIFFS AND
 DuPONT MERCK PHARMACEUTICAL
 COMPANY AS DEFENDANT: 7

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1 Plaintiffs, for their Complaint, aver upon personal knowledge as to their own acts
2 and status and otherwise upon information and belief, as follows:

4 I. NATURE OF THIS ACTION

5 1. This action arises out of the pricing structure, and acts related to the im-
6 position and maintenance of that structure, established by the defendant prescription drug
7 manufacturers to market their prescription drug products.

9 2. Plaintiffs are local drug stores and pharmacies who sell the defendant
10 manufacturers' brand name prescription drugs to the public. More people obtain pre-
11 scription drugs from drug stores and pharmacies than from any other source. Plaintiffs
12 obtain the drugs they sell from defendant manufacturers directly and from those manu-
13 facturers' distributors or wholesalers.

15 3. During recent decades, the defendant drug manufacturers have consistently
16 made extraordinarily and excessively large profits from their prescription drug businesses.
17 These defendants market their prescription drugs to drug stores and pharmacies, such as
18 plaintiffs, at prices that are far above defendants' costs. The excessive prices charged by
19 defendants to drug stores and pharmacies for their brand name products are a principal
20 source of defendants' huge profits in recent decades.

22 4. Because certain prescription drugs of one manufacturer compete with a
23 prescription drug or drugs of another manufacturer or manufacturers, the high mark-ups
24 that each manufacturer receives on its products depends in part on defendants' adher-
25 ence to the price structure they have established.

27 5. Although many millions of Americans depend on their local drug store or
28 pharmacy as their sole or primary supplier of prescription drugs, there are today other
29 competing ways in which consumers obtain prescription drugs--including from mail-order
30 pharmacies and from outlets operated by Health Maintenance Organizations (or
31

1 "HMOs") and other health care providers (sometimes referred to herein collectively as
2 "HMO pharmacies" or "HMO outlets").

3 6. Defendants' prices for prescription drugs they sell to mail-order pharmacies
4 and HMO outlets are substantially and discriminatorily less than the prices that defen-
5 dants charge for the same prescription drugs marketed to drug stores and pharmacies.
6 Mail-order pharmacies and HMO outlets are sometimes referred to as "Favored Purchas-
7 ers" because of the discriminatorily favored treatment they receive from defendant manu-
8 facturers. The difference between the prices charged to Favored Purchasers and the
9 prices charged to drug stores and pharmacies is not justified by any differences in cost or
10 otherwise. Indeed, the drug store and pharmacy plaintiffs offer services to customers on
11 which the mail-order pharmacies and HMO outlets free ride.
12

13 7. Defendants' imposition and maintenance of their tiered pricing structure
14 depends on their mutual adherence to that structure. In the absence of such mutual
15 adherence it would not be in a manufacturer's interest to use such tiered prices, at least
16 in their present extreme form. However, with defendants' mutual adherence to their
17 tiered pricing structure, the structure permits defendants to charge drug stores and phar-
18 macies prices substantially above competitive levels, and to increase profits thereby.
19

20 8. Plaintiffs are harmed by defendants' discriminatory prices in several ways.
21 For example, the prices paid by plaintiffs are higher than they would be in the absence
22 of price discrimination; this increases plaintiffs' costs, reduces their profits, and limits
23 their markets. In addition, because prices paid by competing mail-order pharmacies and
24 HMO outlets are much lower than the prices paid by drug stores and pharmacies, plain-
25 tiffs are unable to compete effectively with those firms.
26

27 9. The public is also harmed by defendants' discriminatory price structure.
28 Consumers pay higher prices for drugs purchased locally than they would if defendants'
29 prescription drugs were priced competitively. Consumers are also deprived of the com-
30
31

petition that would result if drugs stores and pharmacies were able to compete with mail-order pharmacies and HMO outlets on a level playing field.

10. This is a private antitrust action brought under Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15 and 26, alleging violations of the federal antitrust laws, specifically, Section 1 of the Sherman Antitrust Act, 15 U.S.C. § 1, and Sections 2(a), (d), and (f) of the Robinson-Patman Act, and of the common law. The court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1337(a) and 1367(a) and 15 U.S.C. §§ 2, 15, and 26.

11. Venue is proper in this judicial district pursuant to 15 U.S.C. §§ 15, 22, and 26, and 28 U.S.C. § 1391(b). Each of the defendants resides, transacts business, is found, and has agents in this district. A substantial part of the events or omissions giving rise to plaintiffs' claims occurred in this district.

II. THE PARTIES

A. Plaintiffs

12. Plaintiff 4 W'S, INC., d/b/a Bill's Pharmacy, is a corporation organized and existing under the laws of the State of Washington, with its principal business in Ephrata, Washington. Bill's Pharmacy is a local pharmacy which sells the defendant-manufacturers' brand name prescription drugs to the public.

13. Plaintiff A & H STORES, INC., d/b/a A & H Pharmacy #1, A & H Pharmacy #2, A & H Pharmacy #3, A & H Pharmacy #4, A & H Pharmacy #6, and A & H Pharmacy #7, is a corporation organized and existing under the laws of the State of Washington, with its principal business in Auburn, Kent, Renton, and Seattle, Washington. A & H Pharmacy #1, A & H Pharmacy #2, A & H Pharmacy #3, A & H Pharmacy #4, A & H Pharmacy #6, and A & H Pharmacy #7 are local pharmacies which sell the defendant-manufacturers' brand name prescription drugs to the public.

1 14. Plaintiff AAA PRESCRIPTION SVC., INC., d/b/a Odell's Prescription
2 Pharmacy, is a corporation organized and existing under the laws of the State of Wash-
3 ington, with its principal place of business in Tacoma, Washington. Odell's Prescription
4 Pharmacy is a local pharmacy which sells the defendant-manufacturers' brand name
5 prescription drugs to the public.
6

7 15. Plaintiff ALLENMORE PHARMACY, INC., d/b/a Allenmore Pharmacy,
8 Puget Sound Pharmacy, and Rainier Pharmacy, is a corporation organized and existing
9 under the laws of the State of Washington, with its principal place of business in
10 Tacoma, Washington. Allenmore Pharmacy, Puget Sound Pharmacy, and Rainier
11 Pharmacy are local pharmacies which sell the defendant-manufacturers' brand name
12 prescription drugs to the public.
13

14 16. Plaintiff RICHARD D. ANDERSON, d/b/a A & D Pharmacy, owns and
15 operates a local pharmacy located in Tacoma, Washington, which sells the defendant-
16 manufacturers' brand name prescription drugs to the public.

17 17. Plaintiff MICHAEL J. BAKULA, d/b/a Failor Pharmacy, owns and oper-
18 ates a local pharmacy in Tacoma, Washington, which sells the defendant-manufacturers'
19 brand name prescription drugs to the public.
20

21 18. Plaintiff BATTLE GROUND PHARMACY, INC., is a corporation organ-
22 ized and existing under the laws of the State of Washington, with its principal place of
23 business in Battle Ground, Washington. Battle Ground Pharmacy is a local pharmacy
24 which sells the defendant-manufacturers' brand name prescription drugs to the public.
25

26 19. Plaintiff STANLEY C. BERDINKA, d/b/a Family Pharmacy of Auburn,
27 owns and operates a local pharmacy in Auburn, Washington, which sells the defendant-
28 manufacturers' brand name prescription drugs to the public.

29 20. Plaintiff BROWN'S POINT PHARMACY, INC., is a corporation organ-
30 ized and existing under the laws of the State of Washington, with its principal place of
31

1 business in Tacoma, Washington. Brown's Point Pharmacy is a local pharmacy which
2 sells the defendant-manufacturers' brand name prescription drugs to the public.

3 21. Plaintiff LOUIS E. CALDWELL, d/b/a Tacoma Medical Center Phar-
4 macy, owns and operates a local pharmacy in Tacoma, Washington, which sells the
5 defendant-manufacturers' brand name prescription drugs to the public.
6

7 22. Plaintiff CAPITOL PHARMACY, INC., is a corporation organized and
8 existing under the laws of the State of Washington, with its principal place of business in
9 Vancouver, Washington. Capitol Pharmacy is a local pharmacy which sells the defen-
10 dant-manufacturers' brand name prescription drugs to the public.

11 23. Plaintiff CARSON DRUGS, INC., is a corporation organized and existing
12 under the laws of the State of Washington, with its principal place of business in
13 Poulsbo, Washington. Carson Drugs is a local pharmacy which sells the defendant-manu-
14 facturers' brand name prescription drugs to the public.
15

16 24. Plaintiff CASTLE ROCK PHARMACY, INC., is a corporation organized
17 and existing under the laws of the State of Washington, with its principal place of busi-
18 ness in Castle Rock, Washington. Castle Rock Pharmacy is a local pharmacy which sells
19 the defendant-manufacturers' brand name prescription drugs to the public.
20

21 25. Plaintiff CHEWELAH PHARMACY, INC., d/b/a Platters Pharmacy, is a
22 corporation organized and existing under the laws of the State of Washington, with its
23 principal place of business in Spokane, Washington. Platters Pharmacy is a local phar-
24 macy which sells the defendant-manufacturers' brand name prescription drugs to the
25 public.
26

27 26. Plaintiff CITY DRUG CO., INC., is a corporation organized and existing
28 under the laws of the State of Washington, with its principal place of business in Aber-
29 deen, Washington. City Drug Co. is a local pharmacy which sells the defendant-manu-
30 facturers' brand name prescription drugs to the public.
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1 27. Plaintiff BILL CLARKE, d/b/a Clarke's Drugs, owns and operates a local
2 pharmacy in Bremerton, Washington, which sells the defendant-manufacturers' brand
3 name prescription drugs to the public.

4 28. Plaintiff WAYNE L. CLEMENS, d/b/a The Medicine Shoppe, owns and
5 operates a local pharmacy in Spokane, Washington, which sells the defendant-manu-
6 facturers' brand name prescription drugs to the public.

7 29. Plaintiff GARY R. CORNELL, d/b/a Cornell's Valley Pharmacy, owns
8 and operates a local pharmacy in Renton, Washington, which sells the defendant-manu-
9 facturers' brand name prescription drugs to the public.

10 30. Plaintiff COST PLUS PRESCRIPTIONS, INC., d/b/a Cost Plus Prescrip-
11 tion Stores I, II and III, is a corporation organized and existing under the laws of the
12 State of Washington, with its principal place of business in Tacoma, Washington. Cost
13 Plus Prescription Stores I, II, and III are local pharmacies which sell the defendant-
14 manufacturers' brand name prescription drugs to the public.

15 31. Plaintiff COUGHLIN ENTERPRISES, INC., d/b/a The Medicine Shoppe,
16 is a corporation organized and existing under the laws of the State of Washington, with
17 its principal place of business in Vancouver, Washington. The Medicine Shoppe is a
18 local pharmacy which sells the defendant-manufacturers' brand name prescription drugs
19 to the public.

20 32. Plaintiff COVINGTON PHARMACY, INC., d/b/a Covington Pharmacy at
21 Meeker and Covington Pharmacy, is a corporation organized and existing under the laws
22 of the State of Washington, with its principal places of business in Kent, Washington.
23 Covington Pharmacy at Meeker and Covington Pharmacy are local pharmacies which sell
24 the defendant-manufacturers' brand name prescriptions drugs to the public.

25 33. Plaintiff D & R THOMAS, INC., d/b/a Moses Lake Clinic Pharmacy, is a
26 corporation organized and existing under the laws of the State of Washington, with its
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31

1 principal place of business in Moses Lake, Washington. Moses Lake Clinic Pharmacy is
2 a local pharmacy which sells the defendant-manufacturers' brand name prescription
3 drugs to the public.

4 34. Plaintiff DANIELSON & HANSON, INC., d/b/a Green & Jackson Drug
5 and M & R Drug, is a corporation organized and existing under the laws of the State of
6 Washington, with its principal place of business in Walla Walla, Washington. Green &
7 Jackson Drug and M & R Drug are local pharmacies which sell the defendant-manufac-
8 turers' brand name prescription drugs to the public.

9 35. Plaintiff DICK'S PHARMACY, INC., is a corporation organized and exist-
10 ing under the laws of the State of Washington, with its principal place of business in
11 Bellevue, Washington. Dick's Pharmacy is a local pharmacy which sells the defendant-
12 manufacturers' brand name prescription drugs to the public.

13 36. Plaintiff MICHAEL J. DONOHUE, d/b/a Bob Johnson's Pharmacy, owns
14 and operates a local pharmacy in Seattle, Washington, which sells the defendant-manu-
15 facturers' brand name prescription drugs to the public.

16 37. Plaintiff DONALD F. DOWNING, d/b/a Capitol Square Pharmacy, owns
17 and operates a local pharmacy in Federal Way, Washington, which sells the defendant-
18 manufacturers' brand name prescription drugs to the public.

19 38. Plaintiff DRIVE-IN PHARMACY, INC., is a corporation organized and
20 existing under the laws of the State of Washington, with its principal place of business in
21 Port Angeles, Washington. Drive-In Pharmacy is a local pharmacy which sells the
22 defendant-manufacturers' brand name prescription drugs to the public.

23 39. Plaintiff DALE C. DUSKIN, d/b/a Arlington Pharmacy, Cumulus Park
24 Pharmacy, and QuilCeda Pharmacy, owns and operates local pharmacies in Arlington
25 and Marysville, Washington, which sell the defendant-manufacturers' brand name pre-
26 scription drugs to the public.

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FIRST AMENDED COMPLAINT ADDING
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COMPANY AS DEFENDANT: 14

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1 40. Plaintiff EDGEWOOD PHARMACY, INC., is a corporation organized
2 and existing under the laws of the State of Washington, with its principal place of busi-
3 ness in Milton, Washington. Edgewood Pharmacy is a local pharmacy which sells the
4 defendant-manufacturers' brand name prescription drugs to the public.

5 41. Plaintiff EFSCO PRESCRIPTIONS, INC., d/b/a Stowell's Puget Sound
6 Pharmacy and Stowell's Allenmore Pharmacy, is a corporation organized and existing
7 under the laws of the State of Washington, with its principal place of business in
8 Tacoma, Washington. Stowell's Puget Sound Pharmacy and Stowell's Allenmore Phar-
9 macy are local pharmacies which sell the defendant-manufacturers' brand name prescrip-
10 tion drugs to the public.

11 42. Plaintiff FAIRWOOD PHARMACY, INC., is a corporation organized and
12 existing under the laws of the State of Washington, with its principal place of business in
13 Renton, Washington. Fairwood Pharmacy is a local pharmacy which sells the defendant-
14 manufacturers' brand name prescription drugs to the public.

15 43. Plaintiff FAMILY DRUGSTORE, INC., d/b/a Tieton Village Drug, is a
16 corporation organized and existing under the laws of the State of Washington, with its
17 principal place of business in Yakima, Washington. Tieton Village Drug is a local phar-
18 macy which sells the defendant-manufacturers' brand name prescription drugs to the
19 public.

20 44. Plaintiff FAMILY PHARMACY, INC., is a corporation organized and
21 existing under the laws of the State of Washington, with its principal place of business in
22 Federal Way, Washington. Family Pharmacy is a local pharmacy which sells the defen-
23 dant-manufacturers' brand name prescription drugs to the public.

24 45. Plaintiff FAULKNER'S PHARMACY, INC., is a corporation organized
25 and existing under the laws of the State of Washington, with its principal place of busi-
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1 ness in Everett, Washington. Faulkner's Pharmacy is a local pharmacy which sells the
2 defendant-manufacturers' brand name prescription drugs to the public.

3 46. Plaintiff FERNDAL PHARMACY, INC., d/b/a Ferndale Drug Co., is a
4 corporation organized and existing under the laws of the State of Washington, with its
5 principal place of business in Ferndale, Washington. Ferndale Drug Co. is a local phar-
6 macy which sells the defendant-manufacturers' brand name prescription drugs to the
7 public.
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9 47. Plaintiff FIFE DRUG, INC., d/b/a Fife United Drug, is a corporation
10 organized and existing under the laws of the State of Washington, with its principal place
11 of business in Fife, Washington. Fife United Drug is a local pharmacy which sells the
12 defendant-manufacturers' brand name prescription drugs to the public.
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14 48. Plaintiff FORSTROM PHARMACEUTICALS, LTD., d/b/a Central
15 Drug & Gifts, is a corporation organized and existing under the laws of the State of
16 Washington, with its principal place of business in Aberdeen, Washington. Central
17 Drug & Gifts is a local pharmacy which sells the defendant-manufacturers' brand name
18 prescription drugs to the public.
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20 49. Plaintiff GIBBONS PHARMACY, INC., is a corporation organized and
21 existing under the laws of the State of Washington, with its principal place of business in
22 Toppenish, Washington. Gibbons Pharmacy is a local pharmacy which sells the defen-
23 dant-manufacturers' brand name prescription drugs to the public.

24 50. Plaintiff ARTHUR E. GODFREY, d/b/a Godfrey's Pharmacy, owns and
25 operates a local pharmacy in Kalama, Washington, which sells the defendant-manufactur-
26 ers' brand name prescription drugs to the public.
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28 51. Plaintiff HALPIN'S, INC., d/b/a Halpin's Pharmacy, is a corporation
29 organized and existing under the laws of the State of Washington, with its principal place
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1 of business in Spokane, Washington. Halpin's Pharmacy is a local pharmacy which sells
2 the defendant-manufacturers' brand name prescription drugs to the public.

3 52. Plaintiff HERBISON'S PHARMACY, INC., is a corporation organized and
4 existing under the laws of the State of Washington, with its principal place of business in
5 Spokane, Washington. Herbison's Pharmacy is a pharmacy which sells the defendant-
6 manufacturers' brand name prescription drugs to the public.

7 53. Plaintiff HOREN'S DRUGSTORE, INC., is a corporation organized and
8 existing under the laws of the State of Washington, with its principal place of business in
9 Burlington, Washington. Horen's Drugstore is a pharmacy which sells the defendant-
10 manufacturers' brand name prescription drugs to the public.

11 54. Plaintiff J & J PHARMACY, INC., d/b/a J & J Pharmacy and Johnson's
12 Prescription Pharmacy, is a corporation organized and existing under the laws of the
13 State of Washington, with its principal place of business in Edmonds, Washington. J & J
14 Pharmacy and Johnson's Prescription Pharmacy are local pharmacies which sell the
15 defendant-manufacturers' brand name prescription drugs to the public.

16 55. Plaintiff JONES LOW PRICED DRUGS, INC., d/b/a Jones Pharmacy I
17 and Jones Pharmacy II, is a corporation organized and existing under the laws of the
18 State of Washington, with its principal place of business in Spokane, Washington. Jones
19 Pharmacy I and Jones Pharmacy II are local pharmacies which sell the defendant-manu-
20 facturers' brand name prescription drugs to the public.

21 56. Plaintiff K.K.& R., INC., d/b/a A & H Pharmacy, Family Center Phar-
22 macy, Heart Institute Pharmacy, Miller & Felt Pharmacy, People's Pharmacy #4,
23 People's Pharmacy #6, Professional Center Pharmacy, Shadle Park Pharmacy, and South
24 Center Pharmacy, is a corporation organized and existing under the laws of the State of
25 Washington, with its principal place of business in Spokane, Washington. A & H Phar-
26 macy, Family Center Pharmacy, Heart Institute Pharmacy, Miller & Felt Pharmacy,
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1 People's Pharmacy #4, People's Pharmacy #6, Professional Center Pharmacy, Shadle
 2 Park Pharmacy, and South Center Pharmacy are local pharmacies which sell the defen-
 3 dant-manufacturers' brand name prescription drugs to the public.

4 57. Plaintiff PAUL KAMINSKI, d/b/a Darrington Pharmacy, owns and oper-
 5 ates a local pharmacy in Darrington, Washington, which sells the defendant-manufactur-
 6 ers' brand name prescription drugs to the public.

7 58. Plaintiff BEVERLY ANN KATTERMAN, d/b/a Katterman's Sand Point
 8 Pharmacy, owns and operates a local pharmacy in Seattle, Washington, which sells the
 9 defendant-manufacturers' brand name prescription drugs to the public.

10 59. Plaintiff KELLEY-ROSS, INC., d/b/a Kelley-Ross Pharmacy, is a corpora-
 11 tion organized and existing under the laws of the State of Washington, with its principal
 12 place of business in Seattle, Washington. Kelley-Ross Pharmacy is a local pharmacy
 13 which sells the defendant-manufacturers' brand name prescription drugs to the public.

14 60. Plaintiff KEN'S PHARMACY, INC., d/b/a Ken's Pharmacy & Gifts, is a
 15 corporation organized and existing under the laws of the State of Washington, with its
 16 principal place of business in Wenatchee, Washington. Ken's Pharmacy & Gifts is a
 17 local pharmacy which sells the defendant-manufacturers' brand name prescription drugs
 18 to the public.

19 61. Plaintiff LOPEZ ISLAND PHARMACY, INC., is a corporation organized
 20 and existing under the laws of the State of Washington, with its principal place of busi-
 21 ness in Lopez Island, Washington. Lopez Island Pharmacy is a local pharmacy which
 22 sells the defendant-manufacturers' brand name prescription drugs to the public.

23 62. Plaintiff BARRY D. LAFFERTY, d/b/a Barry Lafferty's Rx Pharmacy,
 24 owns and operates a local pharmacy in Seattle, Washington, which sells the defendant-
 25 manufacturers' brand name prescription drugs to the public.

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 FIRST AMENDED COMPLAINT ADDING
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1 63. Plaintiff LAKE HILLS DRUG, INC., is a corporation organized and exist-
 2 ing under the laws of the State of Washington, with its principal place of business in
 3 Bellevue, Washington. Lake Hills Drug is a local pharmacy which sells the defendant-
 4 manufacturers' brand name prescription drugs to the public.

5 64. Plaintiff LAKESIDE DRUG COMPANY, is a corporation organized and
 6 existing under the laws of the State of Washington, with its principal place of business in
 7 Redmond, Washington. Lakeside Drug is a local pharmacy which sells the defendant-
 8 manufacturers' brand name prescription drugs to the public.

9 65. Plaintiff LAKESIDE MERCER DRUG, INC., is a corporation organized
 10 and existing under the laws of the State of Washington, with its principal place of busi-
 11 ness in Mercer Island, Washington. Lakeside Mercer Drug is a local pharmacy which
 12 sells the defendant-manufacturers' brand name prescription drugs to the public.

13 66. Plaintiff RICHARD J. LARSON, d/b/a Oroville Pharmacy, owns and
 14 operates a local pharmacy in Oroville, Washington, which sells the defendant-manufac-
 15 turers' brand name prescription drugs to the public.

16 67. Plaintiff LONGVIEW APOTHECARIES, INC., d/b/a Monticello Apothe-
 17 cary and Medical Arts Apothecary, is a corporation organized and existing under the
 18 laws of the State of Washington, with its principal place of business in Longview, Wash-
 19 ington. Monticello Apothecary and Medical Arts Apothecary are local pharmacies which
 20 sell the defendant-manufacturers' brand name prescription drugs to the public.

21 68. Plaintiff LOOKS MERCER ISLAND PHARMACY, INC., is a corporation
 22 organized and existing under the laws of the State of Washington, with its principal place
 23 of business in Mercer Island, Washington. Mercer Island Pharmacy is a local pharmacy
 24 which sells the defendant-manufacturers' brand name prescription drugs to the public.

1 69. Plaintiff GERALD E. LUST, d/b/a Gerry's Pharmacy, owns and operates
2 a local pharmacy in Auburn, Washington, which sells the defendant-manufacturers' brand
3 name prescription drugs to the public.

4 70. Plaintiff MARK-IT PHARMACY, INC., d/b/a Medical Center Pharmacy,
5 is a corporation organized and existing under the laws of the State of Washington, with
6 its principal place of business in Olympia, Washington. Medical Center Pharmacy is a
7 local pharmacy which sells the defendant-manufacturers' brand name prescription drugs
8 to the public.

9
10 71. Plaintiff MIKE GRAEFF'S EASTSIDE DRUGS, INC., d/b/a Mike's East-
11 side Drugs, is a corporation organized and existing under the laws of the State of Wash-
12 ington, with its principal place of business in Vancouver, Washington. Mike's Eastside
13 Drugs is a local pharmacy which sells the defendant-manufacturers' brand name prescrip-
14 tion drugs to the public.

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16 72. Plaintiff MEDI-SERV, INC., d/b/a Medical Service Pharmacy, is a cor-
17 poration organized and existing under the laws of the State of Washington, with its prin-
18 cipal place of business in Seattle, Washington. Medical Service Pharmacy is a local
19 pharmacy which sells the defendant-manufacturers' brand name prescription drugs to the
20 public.

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22 73. Plaintiff RANDY MENTZER, d/b/a Randy's Prescription Center, a part-
23 nership, owns and operates a local pharmacy in Olympia, Washington, which sells the
24 defendant-manufacturers' brand name prescription drugs to the public.

25 74. Plaintiff MILL CREEK PHARMACY, INC., is a corporation organized
26 and existing under the laws of the State of Washington, with its principal place of busi-
27 ness in Mill Creek, Washington. Mill Creek Pharmacy is a local pharmacy which sells
28 the defendant-manufacturers' brand name prescription drugs to the public.
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1 75. Plaintiffs DONALD W. MURRAY and DONALD N. ELLISTON, a part-
 2 nership, d/b/a Wenatchee Clinic Pharmacy, own and operate a local pharmacy in
 3 Wenatchee, Washington, which sells the defendant-manufacturers' brand name prescrip-
 4 tion drugs to the public.

5 76. Plaintiff NEWPORT HILLS DRUGS, INC., is a corporation organized and
 6 existing under the laws of the State of Washington, with its principal place of business in
 7 Bellevue, Washington. Newport Hills Pharmacy is a local pharmacy which sells the
 8 defendant-manufacturers' brand name prescription drugs to the public.

9 77. Plaintiff NICHOLSON'S PHARMACY, INC., d/b/a Nicholson's Pharmacy
 10 and Bonney Lake Pharmacy, is a corporation organized and existing under the laws of
 11 the State of Washington, with its principal place of business in Sumner, Washington, and
 12 Bonney Lake, Washington. Nicholson's Pharmacy and Bonney Lake Pharmacy are local
 13 pharmacies which sell the defendant-manufacturers' brand name prescription drugs to
 14 the public.

15 78. Plaintiff W. MARK NORRIS d/b/a Beall's Pharmacy, owns and operates a
 16 local pharmacy in Puyallup, Washington, which sells the defendant-manufacturers' brand
 17 name prescription drugs to the public.

18 79. Plaintiff NORTH PINES PHARMACY, INC., d/b/a The Medicine
 19 Shoppe, is a corporation organized and existing under the laws of the State of Washing-
 20 ton, with its principal place of business in Spokane, Washington. The Medicine Shoppe
 21 is a local pharmacy which sells the defendant-manufacturers' brand name prescription
 22 drugs to the public.

23 80. Plaintiff OLYMPIC DRUG, INC., is a corporation organized and existing
 24 under the laws of the State of Washington, with its principal place of business in Long-
 25 view, Washington. Olympic Drug is a local pharmacy which sells the defendant-manufac-
 26 turers' brand name prescription drugs to the public.

27 FIRST AMENDED COMPLAINT ADDING
 28 ADDITIONAL PLAINTIFFS AND
 29 DuPONT MERCK PHARMACEUTICAL
 30 COMPANY AS DEFENDANT: 21
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1 81. Plaintiff OLYMPIC DRUGS, INC., is a corporation organized and existing
2 under the laws of the State of Washington, with its principal place of business in
3 Centralia, Washington. Olympic Drugs is a local pharmacy which sells the defendant-
4 manufacturers' brand name prescription drugs to the public.

5 82. Plaintiff OSTRANDER'S DRUG, INC., is a corporation organized and
6 existing under the laws of the State of Washington, with its principal place of business in
7 Ellensburg, Washington. Ostrander's Drug is a local pharmacy which sells the defen-
8 dant-manufacturers' brand name prescription drugs to the public.

9 83. Plaintiff OTHELLO DRUG, INC., d/b/a Othello Rexall Drug Co., is a
10 corporation organized and existing under the laws of the State of Washington, with its
11 principal place of business in Othello, Washington. Othello Rexall Drug Co. is a local
12 pharmacy which sells the defendant-manufacturers' brand name prescription drugs to the
13 public.

14 84. Plaintiff PECKENPAUGH DRUG CO., INC., is a corporation organized
15 and existing under the laws of the State of Washington, with its principal place of busi-
16 ness in Auburn, Washington. Peckenpaugh Drug Co. is a local pharmacy which sells the
17 defendant-manufacturers' brand name prescription drugs to the public.

18 85. Plaintiff PRESCRIPTIONS, ETC., INC., d/b/a Bellegrove Pharmacy, is a
19 corporation organized and existing under the laws of the State of Washington, with its
20 principal place of business in Bellevue, Washington. Bellegrove Pharmacy is a local
21 pharmacy which sells the defendant-manufacturers' brand name prescription drugs to the
22 public.

23 86. Plaintiff PROFESSIONAL MALL PHARMACY, INC., d/b/a Professional
24 Mall Pharmacy and Sid's Professional Pharmacy, is a corporation organized and existing
25 under the laws of the State of Washington, with its principal place of business in Pull-
26 man, Washington. Professional Mall Pharmacy and Sid's Professional Pharmacy are
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1 local pharmacies which sell the defendant-manufacturers' brand name prescription drugs
2 to the public.

3 87. Plaintiff QUINCY DRUG CO., INC., d/b/a Call Drug, is a corporation
4 organized and existing under the laws of the State of Washington, with its principal place
5 of business in Quincy, Washington. Call Drug is a local pharmacy which sells the defen-
6 dant-manufacturers' brand name prescription drugs to the public.

7 88. Plaintiffs ROBERT and MARY REDMOND, d/b/a Valley Mission
8 Homecare, own and operate a local pharmacy in Spokane, Washington, which sells the
9 defendant-manufacturers' brand name prescription drugs to the public.

10 89. Plaintiff RONALD ROFFLER, d/b/a McCleary Pharmacy, owns and
11 operates a local pharmacy in McCleary, Washington, which sells the defendant-manu-
12 facturers' brand name prescription drugs to the public.

13 90. Plaintiff SALLADAY'S STANDARD PHARMACY, INC., is a corporation
14 organized and existing under the laws of the State of Washington, with its principal place
15 of business in Seattle, Washington. Salladay's Standard Pharmacy is a pharmacy which
16 sells the defendant-manufacturers' brand name prescription drugs to the public.

17 91. Plaintiff MARK SALLANDER, d/b/a Mark's Pharmacy, is owns and oper-
18 ates a local pharmacy in Sumner, Washington, which sells the defendant-manufacturers'
19 brand name prescription drugs to the public.

20 92. Plaintiff SAV-ON DRUGS, INC., is a corporation organized and existing
21 under the laws of the State of Washington, with its principal place of business in
22 Tacoma, Washington. Sav-On Drugs is a local pharmacy which sells the defendant-
23 manufacturers' brand name prescription drugs to the public.

24 93. Plaintiff 78th STREET PHARMACY, INC., d/b/a Hall's Pharmacy, is a
25 corporation organized and existing under the laws of the State of Washington, with its
26 principal place of business in Vancouver, Washington. Hall's Pharmacy is a local phar-
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1 macy which sells the defendant-manufacturers' brand name prescription drugs to the
2 public.

3 94. Plaintiff SILVER LAKE PHARMACY, INC., is a corporation organized
4 and existing under the laws of the State of Washington, with its principal place of busi-
5 ness in Everett, Washington. Silver Lake Pharmacy is a local pharmacy which sells the
6 defendant-manufacturers' brand name prescription drugs to the public.

7 95. Plaintiff SKAGIT VALLEY MEDICAL CENTER PHARMACY, INC., is
8 a corporation organized and existing under the laws of the State of Washington, with its
9 principal place of business in Mt. Vernon, Washington. Skagit Valley Medical Center
10 Pharmacy, Inc., is a local pharmacy which sells the defendant-manufacturers' brand name
11 prescription drugs to the public.

12 96. Plaintiff DENNIS A. SMITH, d/b/a Apothecary Shoppe Pharmacy, owns
13 and operates a local pharmacy in Bremerton, Washington, which sells the defendant-
14 manufacturers' brand name prescription drugs to the public.

15 97. Plaintiff LLOYD D. SMITH, d/b/a Zillah Drug Store, owns and operates
16 a local pharmacy in Zillah, Washington, which sells the defendant-manufacturers' brand
17 name prescription drugs to the public.

18 98. Plaintiff SOUNDVIEW PHARMACY, INC., is a corporation organized
19 and existing under the laws of the State of Washington, with its principal place of busi-
20 ness in Tacoma, Washington. Soundview Pharmacy is a local pharmacy which sells the
21 defendant-manufacturers' brand name prescription drugs to the public.

22 99. Plaintiff STANDARD DRUG, INC., is a corporation organized and exist-
23 ing under the laws of the State of Washington, with its principal place of business in
24 Spokane, Washington. Standard Drug is a local pharmacy which sells the defendant-
25 manufacturers' brand name prescription drugs to the public.

1 100. Plaintiff GEORGE S. STIMAC, d/b/a Market Street Pharmacy, owns and
2 operates a local pharmacy in Seattle, Washington, which sells the defendant-manufactur-
3 ers' brand name prescription drugs to the public.

4 101. Plaintiff ADELE TAVIS, d/b/a Rochester Drug & Variety, owns and
5 operates a local pharmacy in Rochester, Washington, which sells the defendant-manufac-
6 turers' brand name prescription drugs to the public.

7 102. Plaintiff THE KOHOUT CO., d/b/a Kohout's Rose Hill Pharmacy and
8 Lakeview Medical Pharmacy, is a corporation organized and existing under the laws of
9 the State of Washington, with its principal place of business in Kirkland, Washington.
10 Kohout's Rose Hill Pharmacy and Lakeview Medical Pharmacy are local pharmacies
11 which sell the defendant-manufacturers' brand name prescription drugs to the public.
12

13 103. Plaintiff TIDYMAN'S, INC., d/b/a Tidyman's Pharmacy #7, Tidyman's
14 Pharmacy #10, Tidyman's Pharmacy #12, and Tidyman's Pharmacy #15, is a corporation
15 organized and existing under the laws of the State of Washington, with its principal place
16 of business in Greenacres, Washington. Tidyman's Pharmacy #7 (Coeur d'Alene,
17 Idaho), Tidyman's Pharmacy #10 (Kallispell, Montana), Tidyman's Pharmacy #12 (Post
18 Falls, Idaho), and Tidyman's Pharmacy #15 (Moscow, Idaho) are local pharmacies which
19 sell the defendant-manufacturers' brand name prescription drugs to the public.
20

21 104. Plaintiff WENG, INC., d/b/a Wayne's Rx Pharmacy, is a corporation
22 organized and existing under the laws of the State of Washington, with its principal place
23 of business in Tacoma, Washington. Wayne's Rx Pharmacy is a local pharmacy which
24 sells the defendant-manufacturers' brand name prescription drugs to the public.
25

26 105. Plaintiff BRUCE L. WHERRY, d/b/a Barton's Center Pharmacy, owns
27 and operates a local pharmacy in Yakima, Washington, which sells the defendant-manu-
28 facturers' brand name prescription drugs to the public.
29

1 106. Plaintiff WHIDBEY ISLAND DRUG CO., INC., d/b/a Island Drug, is a
2 corporation organized and existing under the laws of the State of Washington, with its
3 principal place of business in Oak Harbor, Washington. Island Drug is a local pharmacy
4 which sells the defendant-manufacturers' brand name prescription drugs to the public.
5

6 107. Plaintiff WIND RIVER PHARMACY, INC., is a corporation organized
7 and existing under the laws of the State of Washington, with its principal place of busi-
8 ness in Stevenson, Washington. Wind River Pharmacy is a local pharmacy which sells
9 the defendant-manufacturers' brand name prescription drugs to the public.

10 108. Plaintiff STUART J. ZIMMERMAN, d/b/a University Pharmacy, owns
11 and operates a local pharmacy in Spokane, Washington, which sells the defendant-manu-
12 facturers' brand name prescription drugs to the public.
13

14 109. Plaintiff BOND ENTERPRISES, INC., d/b/a Olympic Pharmacy, is a cor-
15 poration organized and existing under the laws of the State of Washington, with its prin-
16 cipal place of business in Gig Harbor, Washington. Olympic Pharmacy is a local phar-
17 macy which sells the defendant-manufacturers' brand name prescription drugs to the
18 public.
19

20 110. Plaintiff BRAD-ROAD CORPORATION, d/b/a Medicine Chest
21 Pharmacy, is a corporation organized and existing under the laws of the State of
22 Washington, with its principal place of business in Bremerton, Washington. Medicine
23 Chest Pharmacy is a local pharmacy which sells the defendant-manufacturers' brand
24 name prescription drugs to the public.

25 111. Plaintiff CAMMACK'S PHARMACY, INC., d/b/a Jim's Pharmacy and
26 Home Health, is a corporation organized and existing under the laws of the State of
27 Washington, with its principal place of business in Port Angeles, Washington. Jim's
28 Pharmacy and Home Health is a local pharmacy which sells the defendant-
29 manufacturers' brand name prescription drugs to the public.
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FIRST AMENDED COMPLAINT ADDING
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112. Plaintiff CASCADE PHARMACY, INC., is a corporation organized and existing under the laws of the State of Washington, with its principal place of business in Renton, Washington. Cascade Pharmacy, Inc., is a local pharmacy which sells the defendant-manufacturers' brand name prescription drugs to the public.

113. Plaintiff WILLIAM R. COLEMAN, d/b/a Red Cross Drugs Store, owns and operates a local pharmacy in Wapato, Washington, which sells the defendant-manufacturers' brand name prescription drugs to the public.

114. Plaintiff COLTON PHARMACIES, INC., d/b/a Colton Pharmacy (Morton, WA), Colton Pharmacy (Eatonville, WA), and Colton Pharmacy (Winlock, WA) is a corporation organized and existing under the laws of the State of Washington, with its principal place of business in Morton, Washington. Colton Pharmacy (Morton, WA), Colton Pharmacy (Eatonville, WA), and Colton Pharmacy (Winlock, WA) are local pharmacies which sell the defendant-manufacturers' brand name prescription drugs to the public.

115. Plaintiff COST LESS PRESCRIPTIONS, INC., is a corporation organized and existing under the laws of the State of Washington, with its principal place of business in Tacoma, Washington. Cost Less Prescriptions, Inc., owns and operates a local pharmacy which sells the defendant-manufacturers' brand name prescription drugs to the public.

116. Plaintiff DAVENPORT PHARMACY, INC., d/b/a Davenport Pharmacy, is a corporation organized and existing under the laws of the State of Washington, with its principal place of business in Davenport, Washington. Davenport Pharmacy is a local pharmacy which sells the defendant-manufacturers' brand name prescription drugs to the public.

1 117. Plaintiff RICHARD DAVIDSON, d/b/a Evergreen Drug Center, owns
2 and operates a local pharmacy in Shelton, Washington, which sells the defendant-manu-
3 facturers' brand name prescription drugs to the public.

4 118. Plaintiff DEL PALACIO CORP., d/b/a Riverton Family Pharmacy, is a
5 corporation organized and existing under the laws of the State of Washington, with its
6 principal place of business in Tukwila, Washington. Riverton Family Pharmacy is a local
7 pharmacy which sells the defendant-manufacturers' brand name prescription drugs to the
8 public.
9

10 119. Plaintiff TIM DRISCOLL, d/b/a Tekoa Pharmacy, owns and operates a
11 local pharmacy in Tekoa, Washington, which sells the defendant-manufacturers' brand
12 name prescription drugs to the public.
13

14 120. Plaintiff GIG HARBOR PHARMACY, INC., d/b/a Gig Harbor Rexall, is
15 a corporation organized and existing under the laws of the State of Washington, with its
16 principal place of business in Gig Harbor, Washington. Gig Harbor Rexall is a local
17 pharmacy which sells the defendant-manufacturers' brand name prescription drugs to the
18 public.
19

20 121. Plaintiff HALL'S DRUG STORE, INC., d/b/a Hall's Drug Center and
21 Hall's Medical Center Pharmacy, is a corporation organized and existing under the laws
22 of the State of Washington, with its principal place of business in Centralia, Washington.
23 Hall's Drug Center and Hall's Medical Center Pharmacy are local pharmacies which sell
24 the defendant-manufacturers' brand name prescription drugs to the public.

25 122. Plaintiff HARBOR DRUG, INC., is a corporation organized and existing
26 under the laws of the State of Washington, with its principal place of business in
27 Hoquiam, Washington. Harbor Drug, Inc., is a local pharmacy which sells the
28 defendant-manufacturers' brand name prescription drugs to the public.
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123. Plaintiff TOM HUTTULA, d/b/a Elma Pharmacy, owns and operates a local pharmacy in Elma, Washington, which sells the defendant-manufacturers' brand name prescription drugs to the public.

124. Plaintiff ROBIN E. JOHANSEN, d/b/a Fairhaven Pharmacy, owns and operates a local pharmacy in Bellingham, Washington, which sells the defendant-manufacturers' brand name prescription drugs to the public.

125. Plaintiff MARK JOHNSON, d/b/a Tick Klock Drug, owns and operates a local pharmacy in Colfax, Washington, which sells the defendant-manufacturers' brand name prescription drugs to the public.

126. Plaintiff K-C PHARMACY, INC., is a corporation organized and existing under the laws of the State of Washington, with its principal place of business in Goldendale, Washington. K-C PHARMACY, INC., is a local pharmacy which sells the defendant-manufacturers' brand name prescription drugs to the public.

127. Plaintiff K. A. OLSEN, INC., d/b/a Olsen's Valu-Rite Drug, is a corporation organized and existing under the laws of the State of Washington, with its principal place of business in Seattle, Washington. Olsen's Valu-Rite Drug is a pharmacy which sells the defendant-manufacturers' brand name prescription drugs to the public.

128. Plaintiff KRELL APOTHECARY, INC., d/b/a North Campus Pharmacy, is a corporation organized and existing under the laws of the State of Washington, with its principal place of business in Bellingham, Washington. North Campus Pharmacy is a local pharmacy which sells the defendant-manufacturers' brand name prescription drugs to the public.

129. Plaintiff LINCOLN COUNTY PHARMACY, INC., d/b/a Lincoln County United Drug, is a corporation organized and existing under the laws of the State of Washington, with its principal place of business in Davenport, Washington. Lincoln

1 County United Drug is a local pharmacy which sells the defendant-manufacturers' brand
2 name prescription drugs to the public.

3 130. Plaintiff LUKE'S PHARMACY, INC., is a corporation organized and
4 existing under the laws of the State of Washington, with its principal place of business in
5 Seattle, Washington. Luke's Pharmacy, Inc., is a local pharmacy which sells the
6 defendant-manufacturers' brand name prescription drugs to the public.
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8 131. Plaintiff MANHATTAN PHARMACY, INC., is a corporation organized
9 and existing under the laws of the State of Washington, with its principal place of busi-
10 ness in Seattle, Washington. Manhattan Pharmacy, Inc., is a local pharmacy which sells
11 the defendant-manufacturers' brand name prescription drugs to the public.
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13 132. Plaintiff MALCOLM T. MORRIS, d/b/a White Center Pharmacy, owns
14 and operates a local pharmacy in Seattle, Washington, which sells the defendant-manu-
15 facturers' brand name prescription drugs to the public.

16 133. Plaintiff MR. LUCKY ENTERPRISES, INC., d/b/a Sidie Pharmacy, is a
17 corporation organized and existing under the laws of the State of Washington, with its
18 principal place of business in Bothell, Washington. Sidie Pharmacy is a local pharmacy
19 which sells the defendant-manufacturers' brand name prescription drugs to the public.
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21 134. Plaintiff BLAYNE V. MYHRE, d/b/a White Cross Pharmacy, owns and
22 operates a local pharmacy in Longview, Washington, which sells the defendant-manu-
23 facturers' brand name prescription drugs to the public.

24 135. Plaintiff PROFESSIONAL CENTER PHARMACY, INC., is a corporation
25 organized and existing under the laws of the State of Washington, with its principal place
26 of business in Federal Way, Washington. Professional Center Pharmacy, Inc., is a local
27 pharmacy which sells the defendant-manufacturers' brand name prescription drugs to the
28 public.
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1 136. Plaintiff SAUDER AND SAUDER, INC., d/b/a Steve's Clinic Pharmacy,
2 is a corporation organized and existing under the laws of the State of Washington, with
3 its principal place of business in Seattle, Washington. Steve's Clinic Pharmacy is a local
4 pharmacy which sells the defendant-manufacturers' brand name prescription drugs to the
5 public.
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7 137. Plaintiff CONNIE SHAFER, d/b/a Fifth Avenue Prescription, owns and
8 operates a local pharmacy in Seattle, Washington, which sells the defendant-manufactur-
9 ers' brand name prescription drugs to the public.

10 138. Plaintiff STEVE SHAW, d/b/a North Kitsap Medical Center Pharmacy,
11 owns and operates a local pharmacy in Poulsbo, Washington, which sells the defendant-
12 manufacturers' brand name prescription drugs to the public.

13 139. Plaintiff PATRICK L. SWANSON, d/b/a Swanson's Save-Rite Pharmacy,
14 owns and operates a local pharmacy in Bremerton, Washington, which sells the defen-
15 dant-manufacturers' brand name prescription drugs to the public.
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17 140. Plaintiff TWIN HARBOR DRUG, INC., is a corporation organized and
18 existing under the laws of the State of Washington, with its principal place of business in
19 Westport, Washington. Twin Harbor Drug, Inc., is a local pharmacy which sells the
20 defendant-manufacturers' brand name prescription drugs to the public.
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22 141. Plaintiff VASHON PHARMACY, INC., is a corporation organized and
23 existing under the laws of the State of Washington, with its principal place of business in
24 Vashon, Washington. Vashon Pharmacy, Inc., is a local pharmacy which sells the
25 defendant-manufacturers' brand name prescription drugs to the public.
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142. Plaintiff WILLAPA HARBOR PHARMACIES, INC., d/b/a South Bend Pharmacy, is a corporation organized and existing under the laws of the State of Washington, with its principal place of business in South Bend, Washington. South Bend Pharmacy is a pharmacy which sells the defendant-manufacturers' brand name prescription drugs to the public.

143. Plaintiff WOODINVILLE MEDICAL CENTER PHARMACY, INC., is a corporation organized and existing under the laws of the State of Washington, with its principal place of business in Woodinville, Washington. Woodinville Medical Center Pharmacy, Inc., is a local pharmacy which sells the defendant-manufacturers' brand name prescription drugs to the public.

B. Defendants

144. Defendant ABBOTT LABORATORIES ("Abbott") is an Illinois corporation with its principal place of business in Abbott Park, Illinois. During the time period covered by this Complaint, Abbott engaged in the business of manufacturing and marketing brand name prescription drugs throughout the United States including, but not limited to, Biaxin, Depakote, Depakene, EES, Enduron, Hytrin, K-Lor, K-Tab, PCE, Tranxene, Maxide, Rheumatrex, and Methotrexate.

145. Defendant AMERICAN CYANAMID COMPANY ("American Cyanamid") is a Maine corporation with its principal place of business in Wayne, New Jersey. During the period covered by this Complaint, American Cyanamid engaged in the business of manufacturing and marketing brand name prescription drugs throughout the United States, including, but not limited to, Maxzide, Minocin, Prostep, Rheumatrex Methotrexate, and Verelan.

146. Defendant AMERICAN HOME PRODUCTS CORPORATION ("American Home") is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in Madison, New Jersey. American Home is the manufacturer of numerous brand name prescription drugs, including but not limited to, the drugs Advil Suspension, Ativan Tablets, Aygestin, Cordarone Tablets, Dimetane DC, Dimetane DX, Grisactin Capsules, Grisactin Tablets, Grisactin Ultra, Inderal, Isordil, Lo/Ovral, Lodine, Micro-K, Mysoline, Nordette, Norplant System, Orudis, Premarin, Phenergan, Premarin, Quinidex, Reglan, Sectral, Stuartnatal, Surmontil, Tenex, Triphasil, Wygesic, and Wytensin. American Home sells these and other drugs throughout the United States, including in this judicial district.

147. Defendant BOEHRINGER INGELHEIM PHARMACEUTICALS, INC. ("Boehringer"), is a corporation organized and existing under the laws of the State of Delaware with its principal place of business in Ridgefield, Connecticut. During the period covered by this Complaint, defendant Boehringer engaged in the business of manufacturing and marketing brand name prescription drugs throughout the United States including, but not limited to, Alupent, Mexitil, Catapres, Desyrel, and Persantine.

148. Defendant BRISTOL-MYERS SQUIBB COMPANY ("Bristol-Myers") is a Delaware corporation with its principal place of business in New York, New York. During the period covered by this Complaint, defendant Bristol-Myers engaged in the business of manufacturing and marketing brand name prescription drugs throughout the United States, including, but not limited to, Capoten, Corgard, Questran, Pravachol, Cefzil, Duricef, Buspar, Desyrel, Ovcon, Estrace, and K-Lyte.

149. Defendant BURROUGHS WELLCOME CO. ("Burroughs"), a subsidiary of The Wellcome Foundation, Ltd., is a corporation organized and existing under the laws of the State of North Carolina with its principal place of business at Research Triangle Park, North Carolina. During the time period covered by this Complaint, Bur-

roughs engaged in the business of manufacturing and marketing brand name prescription drugs throughout the United States, including, but not limited to, Imuran, Lanoxin, Retrovir, Wellbutrin, and Zovirax.

150. Defendant CIBA-GEIGY CORPORATION ("Ciba-Geigy") is a corporation organized and existing under the laws of the State of New York, with its principal place of business in Ardsley, New York. Ciba-Geigy is the manufacturer of numerous brand name prescription drugs, including, but not limited to, the drugs Anafranil, Brethaire, Brethine, Estraderm, Habitrol Patch, Lioresal, Lotensin, Ludiomil, Rimactane, Ritalin, Ser-Ap-Es, Slow-K, Tegretol, Ten-K, Transderm-Nitro, Tofranil, and Voltaren. Ciba-Geigy sells these and other drugs throughout the United States, including in this judicial district.

151. Defendant THE DuPONT MERCK PHARMACEUTICAL COMPANY ("DuPont Merck") is a 50/50 joint venture between E. I. Du Pont de Nemours & Co. and Calgon Vestal Laboratories, Inc., a wholly owned subsidiary of Defendant Merck & Co., Inc., with its principal place of business in Wilmington, Delaware. During the time period covered by this Complaint, DuPont Merck engaged in the business of manufacturing and marketing brand-name prescription drugs throughout the United States, including but not limited to the drugs Coumadin, Sinemet, and Percocet.

152. Defendant ELI LILLY & COMPANY ("Lilly") is an Indiana corporation with its principal place of business in Indianapolis, Indiana. During the time period covered by this Complaint, Lilly engaged in the business of manufacturing and marketing brand name prescription drugs throughout the United States, including, but not limited to, the drugs Axid, Ceclor, Darvocet, Humulin, Iletin, Keflex, and Prozac.

1 153. Defendant FOREST LABORATORIES, INC. ("Forest"), is a Delaware
2 corporation with its principal place of business in New York, New York. During the
3 time period covered by this Complaint, Forest engaged in the business of manufacturing
4 and marketing brand name prescription drugs throughout the United States, including,
5 but not limited to, the drugs Aerobid, Armour Thyroid, Tessalon Perles, Esgic,
6 Elixophyllin, Aygestin, Corden Tos, and Orndix.

7 154. Defendant G. D. SEARLE & COMPANY ("Searle") is a corporation
8 organized and existing under the laws of the state of Delaware, with its principal place of
9 business in Skokie, Illinois. Searle is the manufacturer of numerous brand name pre-
10 scription drugs, including, but not limited to, the drugs Aldactazide, Aldactone, Calan,
11 Calan SR, Cytotec, Kerlone, and Nitrodisc. Searle sells these and other drugs through-
12 out the United States, including in this judicial district.

13 155. Defendant GLAXO, INC. ("Glaxo"), is a corporation organized and exist-
14 ing under the laws of the State of North Carolina, with its principal place of business in
15 Research Triangle Park, North Carolina. Glaxo is the manufacturer and/or marketer of
16 numerous brand name prescription drugs, including, but not limited to, the drugs Aclo-
17 vate, Beclovant, Beconase, Beconase AQ, Ceftin, Cutivate, Imitrex, Oxistat, Temovate,
18 Trandate, Ventolin, and Zantac. Glaxo sells these and other drugs throughout the
19 United States, including in this judicial district.

20 156. Defendant HOFFMAN-LaROCHE, INC. ("Hoffmann"), is a corporation
21 organized and existing under the laws of the State of New Jersey, with its principal place
22 of business in Nutley, New Jersey. Hoffmann is the manufacturer of numerous brand
23 name prescription drugs, including, but not limited to, the drugs Bactrim, Librax, and
24 Valium.

157. Defendant KNOLL PHARMACEUTICAL COMPANY ("Knoll") is a New Jersey corporation with its principal place of business in Whippany, New Jersey. During the time period covered by the Complaint, Knoll engaged in the business of manufacturing and marketing brand name prescription drugs throughout the United States, including, but not limited to, the drugs Istoptin and Vicodin.

158. Defendant JOHNSON & JOHNSON ("J & J") is a New Jersey corporation with its principal place of business in New Brunswick, New Jersey. During the time period covered by this Complaint, J & J engaged in the business of manufacturing and marketing brand name prescription drugs throughout the United States, including, but not limited to the drugs Duragesic, Floxin, Haldol, Hismanal, Nizoral, Ortho Novum, Retin-A, Terazol, and Tylenol with Codeine.

159. Defendant MARION MERRELL DOW, INC. ("MMD"), is a Delaware corporation with its principal place of business in Midland, Michigan. During the time period covered by this Complaint, MMD engaged in the business of manufacturing and marketing brand name prescription drugs throughout the United States, including, but not limited to, Carafate, Cardizem, Nicoderm and Seldane.

160. Defendant MERCK & CO., INC. ("Merck"), is a corporation organized and existing under the laws of the State of New Jersey with its principal place of business in Whitehouse Station, New Jersey. During the time period covered by this Complaint, Merck engaged in the business of manufacturing and marketing brand name prescription drugs throughout the United States including, but not limited to, Aldomet, Clinoril, Dolobid, Indocin, Flexeril, Mevacor, Triavil, Tonocard, Pepcid, Prilosec, Prinivil, Vasoretic, Vasotec, Timoptic, and Zocor.

161. Defendant PFIZER, INC. ("Pfizer"), is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in New York, New York. Pfizer is the manufacturer of numerous brand name prescription

1 drugs, including, but not limited to, the drugs Diabinese, Glucotrol, Procardia, Vibra-
 2 mycin, and Vistaril. Pfizer sells these and other drugs throughout the United States,
 3 including in this judicial district.

4 162. Defendant PURDUE FREDERICK COMPANY ("Purdue-Frederick") is a
 5 New York corporation with its principal place of business in Norwalk, Connecticut.
 6 During the time period covered by this Complaint, Purdue-Frederick engaged in the
 7 business of manufacturing and marketing brand name prescription drugs throughout the
 8 United States, including, but not limited to MS Contin, Uniphyl, and Trilisate.

9 163. Defendant RHONE-POULENC RORER PHARMACEUTICALS, INC.
 10 ("Rhone-Poulenc"), is a corporation organized and existing under the laws of the State of
 11 Delaware with its principal place of business in Collegeville, Pennsylvania. During the
 12 time period covered by this Complaint, Rhone-Poulenc engaged in the business of manu-
 13 facturing and marketing brand name prescription drugs throughout the United States,
 14 including, but not limited to, Azmacort, DDAVP, Lozol, Nasacort, and Slo-Bid.

15 164. Defendant SANDOZ PHARMACEUTICAL CORP. ("Sandoz") is a New
 16 York corporation with its principal place of business in New York, New York. During
 17 the time period covered by this Complaint, Sandoz engaged in the business of manufac-
 18 turing and marketing brand name prescription drugs throughout the United States,
 19 including, but not limited to, Clozaril, DynaCirc, Fiorinal, Parlodel, Restoril, Sand-
 20 immune, Tavis, Tavist-D, and Viskin.

21 165. Defendant SCHERING CORPORATION ("Schering") is a corporation
 22 organized and existing under the laws of the State of New Jersey, with its principal place
 23 of business in Kenilworth, New Jersey. Schering manufactures and sells certain brand
 24 name prescription drugs in various parts of the United States, including the drugs
 25 K-Dur, Nitro-Dur, Normodyne, Proventil, Theo-Dur, Vacenase, Vancenase AQ, and
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1 Vanceril. Schering sells these and other drugs throughout the United States, including in
2 this judicial district.

3 166. Defendant SCHERING-PLOUGH CORPORATION ("Schering-Plough") is
4 a corporation organized and existing under the laws of the State of New Jersey, with its
5 principal place of business in Madison, New Jersey. Schering-Plough owns and controls
6 Schering Corporation, which manufactures and sells certain brand name prescription
7 drugs in various parts of the United States, including, but not limited to, the drugs
8 K-Dur, Nitro-Dur, Normodyne, Proventil, Theo-Dur, Vacenase, Vancenase AQ, and
9 Vanceril. Schering sells these and other drugs throughout the United States, including in
10 this judicial district.
11

12 167. Defendant SMITHKLINE BEECHAM CORPORATION ("SmithKline") is
13 a corporation organized and existing under the laws of the State of Delaware, with its
14 principal place of business in Philadelphia, Pennsylvania. SmithKline sells numerous
15 brand name prescription drugs, including, but not limited to, the drugs Relafen and
16 Tagament. SmithKline sells brand name prescription drugs throughout the United States
17 including in this judicial district.
18

19 168. Defendant THE UPJOHN COMPANY ("Upjohn") is a Delaware corpora-
20 tion with its principal place of business in Kalamazoo, Michigan. During the time period
21 covered by this Complaint, Upjohn engaged in the business of manufacturing and
22 marketing brand name prescription drugs throughout the United States, including, but
23 not limited to, Ansaid, Halcion, Micronase, Motrin, Provera, Rogaine, and Xanax.
24

25 169. Defendant WARNER-LAMBERT COMPANY ("Warner-Lambert") is a
26 Delaware corporation with its principal place of business in Morris Plains, New Jersey.
27 During the time period covered by this Complaint, Warner-Lambert engaged in the
28 business of manufacturing and marketing brand name prescription drugs throughout the
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1 United States, including the drugs Dilantin, Loestrin FE, Lopid, Nitrostat, and Procan
2 SB.

3 170. Defendant ZENECA, INC., formerly known as ICI Americas, Inc.
4 ("Zeneca"), is a Delaware corporation with its principal place of business in Wilmington,
5 Delaware. During the time period covered by this Complaint, Zeneca engaged in the
6 business of manufacturing and marketing brand name prescription drugs throughout the
7 United States including, but not limited to, Elavil, Nolvadex, Tenoretic, Tenorim, and
8 Zestril.
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10 171. The defendants identified in Paragraphs 95 through 120 above are herein-
11 after sometimes referred to collectively as the "Manufacturer Defendants."
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13 172. Defendant MEDCO CONTAINMENT SERVICES, INC., is a corporation
14 organized and existing under the laws of the State of Delaware, with its principal place
15 of business in Montvale, New Jersey. Medco Containment Services, Inc., through its
16 wholly owned subsidiaries, defendants National Pharmacies, Inc. and PAID Prescriptions,
17 Inc. (hereinafter collectively "Medco"), operates a mail-order pharmacy that competes
18 with Plaintiffs for the sale of brand name prescription drugs throughout the United
19 States, including in this judicial district.
20

21 173. Defendant CAREMARK, INC. ("Caremark"), is a corporation organized
22 and existing under the laws of the State of California, with its principal place of business
23 in Arlington, Texas. Defendant Caremark operates a mail-order pharmacy that
24 competes with Plaintiffs for the sale of brand name prescription drugs throughout the
25 United States, including in this judicial district.
26

27 174. Defendant J. C. PENNEY COMPANY, INC., d/b/a Express Pharmacy
28 Services ("Express Pharmacy"), is a Delaware corporation with its principal place of busi-
29 ness at 100 Delta Drive, Pittsburg, Pennsylvania. Defendant Express Pharmacy operates
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1 a mail-order pharmacy that competes with Plaintiffs for the sale of brand name prescrip-
 2 tion drugs throughout the United States, including in this judicial district.

3 4 **III. STATEMENT OF FACTS**

5 **A. Trade and Commerce**

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7 175. The trade and commerce relevant to this action is in the sale of brand
 8 name prescription drugs. During the relevant time period, Manufacturer Defendants and
 9 their co-conspirators manufactured and sold brand name prescription drugs in each of
 10 the 50 states and throughout the United States.

11 176. During the relevant time period, the defendants and their co-conspirators
 12 sold and shipped substantial quantities of brand name prescription drugs in a continuous
 13 and uninterrupted flow of interstate commerce to customers located in states other than
 14 the states in which said brand name prescription drugs were manufactured. Defendants
 15 also regularly received payment for brand name prescription drugs across state lines.

16 177. Plaintiffs purchase defendants' brand name prescription drugs directly from
 17 defendants and through defendants' distributors who are often referred to as "whole-
 18 salers."
 19

20 178. Plaintiffs resell defendants' brand name prescription drugs to those that
 21 need them. In reselling such drugs, plaintiffs compete with others who have also
 22 acquired such drugs directly from defendants or through defendants' distributors. Plain-
 23 tiffs' competitors include other independent pharmacies, drug store chains (including
 24 drug stores operated by grocery stores and others), mail-order pharmacies (which sell
 25 defendants' brand name prescription drugs by mail), and HMO pharmacies (which pro-
 26 vide defendants' brand name prescription drugs to their members and others).
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179. The nature and extent of the contracts and arrangements between defendants and their distributors is such that purchases through wholesalers are for all practical purposes direct purchases from defendants. The contracts and arrangements between defendants and their distributors permit the defendants to effectively control to whom the distributors distribute defendants' brand name prescription drugs and at what prices.

B. Third-Party Plans

180. Many public and private employers provide health benefits plans that cover some or all of the cost of prescription drugs for their present and former employees (and, in most cases, members of their immediate families). Similarly, insurance companies and certain types of HMOs offer plans that cover some or all of the cost of prescription drugs for those who purchase the insurance or enroll in the HMOs. These benefit plans, insurance policies, and HMOs that cover the cost of prescription drugs are commonly referred to as "third-party plans," in that the plans cover payments to "third-party" providers of medical goods and services. Millions of people nationwide have some or all of the cost of their prescription drugs covered by third-party plans.

181. Plaintiffs compete to convince consumers and their employers to purchase their brand name prescription drugs from plaintiffs as opposed to an HMO or third-party plan; with respect to consumers affiliated with an HMO or third-party plan, plaintiffs compete to be such consumers' brand name prescription drug provider under the terms of such HMO or third-party plan.

182. The sponsors of third-party plans, alone or in conjunction with administrators that they hire to administer the plans, frequently select a preferred source or sources from which participants in a plan may obtain prescription drugs. This is particularly important for so-called "maintenance drugs" which are those prescription drugs that are designed to treat chronic, long-term health problems, as opposed to acute, short-term

1 health problems. For example, drugs designed to combat ulcers, hypertension, and dia-
 2 betes are sometimes referred to as maintenance drugs, while those designed to combat
 3 influenza, bronchitis, and temporary severe pain are sometimes referred to as "acute-care
 4 drugs."

5
 6 183. Once a plan sponsor or plan administrator designates the source or sources
 7 that will provide prescription drugs under the terms of a third-party plan, the plan
 8 generally covers some or all of the cost of drug prescriptions for a plan participant only
 9 if that participant has the prescription filled by the designated providers. Alternatively, a
 10 plan sponsor or plan administrator may establish co-payment or reimbursement rates
 11 that are substantially more favorable to a plan participant if that participant has the
 12 prescription filled by the designated provider. The participant incurs far greater costs by
 13 filling the prescription at a local drugstore or pharmacy that is not a designated provider.
 14

15 184. Typically a plan participant is issued an identification card that he or she
 16 must present to the designated provider. The designated provider fills the prescription
 17 and then receives payment from the plan sponsor or plan administrator in the amount
 18 negotiated between the designated provider and the plan sponsor/administrator.
 19

20 185. The sponsors of third-party plans select the entities that will provide main-
 21 tenance drugs to plan participants based principally on price. In some instances, the plan
 22 sponsors select only a single entity to provide all of the maintenance drugs for all of the
 23 participants in the plan.

24 186. In addition to plans that require participants to obtain drugs from a single
 25 entity, many third-party plans offer plan participants a choice of maintenance drug pro-
 26 viders.
 27

28 187. Because the sponsors of these third-party plans are sensitive to price differ-
 29 entials, the sponsors often create financial disincentives for plan participants to choose to
 30 have their maintenance drug prescriptions filled by designated providers. Plan sponsors
 31

1 often require plan participants to pay some portion of the prescription cost (called a
 2 "co-payment") and/or to satisfy a deductible if they have their prescriptions filled by a
 3 source that is not a designated provider. Plan sponsors in such cases allow plan partici-
 4 pants to make lower co-payments (or no co-payments at all) and/or waive the deduct-
 5 ible if the prescriptions are filled by a particular designated provider.
 6

7 188. The plan participants, like the plan sponsors themselves, are also sensitive
 8 to price differentials. This is particularly true for purchasers of so-called maintenance
 9 drugs. As a result where they have a choice they will usually select a designated provider
 10 over another competing source and will usually select between two or more competing
 11 designated providers based on their relative prices.
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13 189. Plaintiffs compete to be designated as prescription drug providers to third-
 14 party plans, *i.e.*, to provide maintenance drugs to consumers whose purchases are covered
 15 under third-party plans. Plaintiffs' competitors for these sales include, but are not
 16 limited to, other drugstores and pharmacies, as well as "mail-order pharmacies" and
 17 HMO outlets or HMO pharmacies.
 18

19 C. Mail-Order Pharmacies

20 190. Mail-order pharmacies receive prescriptions from customers through the
 21 mail and fill those prescriptions by dispensing the drugs to customers through the mail.
 22 Each of the Manufacturer Defendants has sold prescription drugs to mail-order pharma-
 23 cies in interstate commerce at substantial discounts (and/or with substantial rebates)
 24 from the price contemporaneously charged by that Manufacturer Defendant to plaintiffs
 25 (and/or to wholesale distributors that supply drugs to plaintiffs) for the same drugs.
 26 These discriminatory prices and/or rebates are not justified by any differing methods or
 27 quantities in which such drugs are sold or by any cost differences.
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191. Plaintiffs compete with mail-order pharmacies for the sale of brand name prescription drugs to consumers. As a result of the favorable discriminatory prices charged to mail-order pharmacies by the Manufacturer Defendants, plaintiffs have lost sales to consumers and have had to cut their prices in response to the unfair competitive advantage enjoyed by the mail-order pharmacies.

192. As a result of the favorable, discriminatory prices charged to mail-order pharmacies by the Manufacturer Defendants, those mail-order pharmacies have been able to underbid plaintiffs in the competition for selection as the sole provider of maintenance drugs to third-party plans.

193. As a result of the favorable, discriminatory prices charged to mail-order pharmacies, the Manufacturer Defendants have also caused plaintiffs to artificially lose sales where plaintiffs have been selected as one of more than one designated providers. For example, a particular plan may permit plan participants to have maintenance drug prescriptions filled by plaintiffs, by other drugstores, and by a mail-order pharmacy. As a result of the favorable discriminatory prices charged to mail-order pharmacies by the Manufacturer Defendants, those mail-order pharmacies can and do dispense the drugs to plan participants at prices below those offered by the plaintiffs. The Manufacturer Defendants' discriminatory prices thus cause plaintiffs to lose significant sales when both a mail-order pharmacy and plaintiffs are selected as providers under a plan, thereby preventing plaintiffs from competing effectively for the prescription business of plan participants.

194. As a result of the favorable discriminatory prices charged to mail-order pharmacies by the Manufacturer Defendants, plan sponsors are able to set the reimbursement price at a level that, in many instances, is at or below plaintiffs' cost of acquiring the drugs. Consequently, plaintiffs are often economically foreclosed from bidding to become providers of maintenance drugs to those plans. In other instances,

1 plaintiffs agree to provide drugs to the plan participants, but plaintiffs lose profits on
 2 those sales because the reimbursement level set by the plan sponsor--which is a result of
 3 the favorable, discriminatory prices charged to the mail-order pharmacies by the Manu-
 4 facturer Defendants--are below the levels that would otherwise prevail.

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 7 **D. HMO Pharmacies**

8 195. HMOs provide brand name prescription drugs to their participants in
 9 several ways. In some cases an HMO functions like a third-party plan with the HMO
 10 paying for, or reimbursing subscribers for, the cost of brand-name prescription drugs
 11 obtained from an approved supplier.

12 196. In other cases an HMO may operate its own pharmaceutical outlet from
 13 which it dispenses prescription drugs to its subscribers (and, in some instances, to
 14 others).

15 197. The Manufacturer Defendants sell their brand name prescription drugs to
 16 HMO outlets at prices that are discriminatorily lower than the prices at which plaintiffs
 17 are permitted to buy the same brand name prescription drugs. The Manufacturer Defen-
 18 dants also provide HMO outlets with terms and conditions, including services and
 19 rebates, not offered to plaintiffs. The discriminatorily lower prices, and the discrimina-
 20 tory terms and conditions, offered HMO pharmacies are not justified by any differing
 21 methods or quantities in which such drugs are sold or by any cost differences.

22 198. The discriminatorily lower prices, and the discriminatory terms and condi-
 23 tions, offered HMO pharmacies unfairly discriminate against plaintiffs and cause plain-
 24 tiffs to lose sales in competition with HMO outlets.

25 199. Plaintiffs have also suffered damage as a result of the lower prices that
 26 they have been required to charge.
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1 **E. The Role of Defendants' Distributors or "Wholesalers"**

2 200. HMOs, mail-order pharmacies, and others which operate pharmaceutical
3 outlets and purchase brand-name prescription drugs manufactured by the Manufacturer
4 Defendants at much lower prices than the prices at which the same drugs are sold to
5 plaintiffs, are sometimes referred to herein as "Favored Purchasers"; hospitals and nurs-
6 ing homes also purchase brand name prescription drugs manufactured by the Manufac-
7 turer Defendants from wholesale distributors at similarly low prices.

9 201. In some cases Favored Purchasers, like plaintiffs, buy directly from Defen-
10 dant Manufacturers. In other cases Favored Purchasers, like plaintiffs, buy from Defen-
11 dant Manufacturers through their distributors. In either case, Defendant Manufacturers,
12 through contracts, combinations, and/or conspiracies with their distributors, control the
13 prices, terms, and conditions offered.

15 202. The Manufacturer Defendants have entered into agreements with whole-
16 sale distributors concerning the price at which those distributors will sell that manufac-
17 turer's brand name prescription drugs to Favored Purchasers. Pursuant to this arrange-
18 ment, each of the Manufacturer Defendants has agreed with Favored Purchasers as to
19 the price at which the Favored Purchaser will be permitted to purchase that defendants'
20 brand name prescription drugs from a wholesale distributor. These agreements provide
21 that the Favored Purchasers may purchase the defendant's brand name prescription
22 drugs at substantial discounts below the price at which the defendant sells the same
23 brand name prescription drugs to plaintiffs.

25 203. The Manufacturer Defendants have, in turn, agreed with the wholesaler
26 distributors that:

- 27 a. The wholesale distributors will charge to the Favored Purchasers the
28 discounted prices negotiated between the Manufacturer Defendants and the
29 Favored Purchasers;
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31

1 b. When the Favored Purchasers purchase drugs from the wholesale
2 distributors (at the price agreed to by the Manufacturer Defendants), the whole-
3 sale distributors will fill the orders from their inventory which they have previ-
4 ously acquired from the Manufacturer Defendants;

5 c. The Manufacturer Defendants will thereafter pay the wholesale
6 distributor the difference between the amount that the distributor paid the Manu-
7 facturer Defendant for the drugs and the discounted amount (negotiated between
8 the Manufacturer Defendant and the Favored Purchaser) at which the distributor
9 sold the drugs to the Favored Purchaser, plus a fee.

10 204. Because the prices negotiated between the Manufacturer Defendants and
11 the Favored Purchasers are below the wholesalers' normal costs of acquiring the drugs
12 from the Manufacturer Defendants, the wholesalers are economically foreclosed from
13 selling the drugs to the Favored Purchasers except through the arrangements dictated by
14 the Manufacturer Defendants.

15 205. Through the mechanics of these agreements, the Manufacturer Defendants
16 have arranged for Favored Purchasers including HMO pharmacies--both for-profit and
17 not-for-profit outlets--to purchase the Manufacturer Defendants' brand name prescription
18 drugs at prices that are significantly below the prices at which the Manufacturer Defen-
19 dants sell the same drugs to plaintiffs (and/or to wholesale distributors that supply drugs
20 to plaintiffs). The prices at which the Favored Purchasers including HMO pharmacies
21 purchase the drugs are set by the Manufacturer Defendants, not by the wholesale distrib-
22 utors.
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1 **F. The Discriminatory Effect of Defendants' Pricing**

2 206. Plaintiffs compete with Favored Purchasers, including mail-order phar-
3 macies and HMO pharmacies, for sales of defendants' brand-name prescription drugs to
4 consumers.

5 207. Plaintiffs have lost, and continue to lose, sales to consumers as a result of
6 the joint and several conduct of the Manufacturer Defendants in charging discriminator-
7 ily favorable prices to Favored Purchasers.

8 208. The favorable, discriminatory prices made available by the Manufacturer
9 Defendants to Favored Purchasers are not justified by any differing methods of quantities
10 by which, or quantities in which, drugs are sold.

11 209. As a result of the favorable, discriminatory prices charged to mail-order
12 pharmacies and other Favored Purchasers by the Manufacturer Defendants, those
13 Favored Purchasers are currently able to under-sell plaintiffs and others on brand name
14 prescription drugs purchased from the Manufacturer Defendants.

15 210. The discriminatory prices and/or rebates described above have caused and
16 continue to cause significant harm not only to plaintiffs, but also to the consuming pub-
17 lic. The Manufacturer Defendants' exclusion of plaintiffs and other drugstores from the
18 favorable prices enjoyed by mail-order pharmacies, HMO pharmacies, and other Favored
19 Purchasers has insulated such Favored Purchasers from the vigorous competition that
20 they would otherwise face from plaintiffs and others.

21 **G. Defendants' Joint Action**

22 211. Manufacturer Defendants acted in parallel and pursuant to agreements
23 establishing and adhering to the discriminatory pricing structure described above.
24 Indeed, the success and viability of that pricing structure was dependent on the mutual
25 agreement and adherence of multiple manufacturers--no single manufacturer would have
26

1 found the pricing structure in the form adopted to be in its unilateral self-interest in the
2 absence of such mutual adherence.

3 212. In establishing, and adhering to, their discriminatory pricing structure,
4 Defendant Manufacturers each acted pursuant to their mutual understanding that other
5 such manufacturers would employ such a pricing structure.

6 213. In order to implement and facilitate their mutual understanding, Manufac-
7 turer Defendants adopted a number of facilitating devices and actions, including the
8 structured exchange of pricing information, common distribution agreements, and the
9 establishment of a price structure designed to facilitate mutual adherence.

10 214. The adverse discriminatory effect of defendants' imposition and main-
11 tenance of their price structure is aggravated by the increasing importance of HMOs,
12 health insurance plans, and efforts to reduce medical costs.

13 H. Patents, Formularies, and Conversion Services

14 215. Through webs of patents, acquisitions, and "conversion" schemes, among
15 others, the Manufacturer Defendants have been able to (i) insulate themselves from
16 competition; (ii) increase their profit margins by raising their prices on existing products;
17 (iii) exclude products of independent generic manufacturers from formularies; (iv) gain
18 control over formularies, and (v) acquire or otherwise take control of entities (HMOs,
19 pharmacy benefit managers ["PBMs"], and other health care providers) which either have
20 formularies or are in a position to enforce "conversion services."

1 216. Typically, patented drugs are covered by multiple patents which may be
2 granted for new drug entities, dosage forms, drug uses, and manufacturing processes.
3 Since the patents are issued at different times, by clustering patents with overlapping
4 scope, a Manufacturer Defendant can extend by many years the normal 17-year life of
5 the original drug patent. Drug patents, coupled with aggressive advertising and exten-
6 sive, expensive, marketing create vast leverage over the market.
7

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10 217. The vast majority of the top selling prescription drugs in the United States
11 are manufactured by the Manufacturer Defendants. Each of these drugs has been the
12 subject of one or more patents. Although some of the patents have expired, a substan-
13 tial majority of the top selling drugs are still protected by patents, some of which will not
14 expire until well after the year 2000. New patents involving these same drugs may here-
15 after be granted which could extend the patent protection well into the second quarter of
16 the next century.
17

18 218. The fact that Manufacturer Defendants own the patents on nearly all of
19 the top selling drugs still under patent, plus those in the pipeline, gives them the market
20 control, which they exercise as a group and in lockstep, to refuse to extend to the plain-
21 tiffs and their buying groups the discounts the Manufacturer Defendants routinely grant
22 to PBMs, HMOs, hospitals and mail-order pharmacies which have restrictive formularies
23 or whom the Manufacturer Defendants know to be able to effect "conversion services."
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1 219. Given the Manufacturer Defendants' dominant patent position and over-
 2 whelming market share, the plaintiffs have no alternate source. The patents preclude
 3 others from entering the market to cure anti-competitive behavior. The patents also
 4 facilitate the group boycott. The group boycott would be far less stable, if not
 5 impossible, without the patents. The group boycott, in turn, facilitates the Manufacturer
 6 Defendants' price discrimination which but for the patents could be defeated in various
 7 ways. Entry of competitors, arbitrage, and other normal market forces which would
 8 defeat group boycotts and price discrimination are blocked by the patents and the actions
 9 in concert of the Manufacturer Defendants.

10 220. Since many of the Manufacturer Defendants own captive generic manufac-
 11 turers, gaining control of formularies not only gives the Manufacturer Defendant the
 12 power to place its branded drugs on the formularies, it also gives the Manufacturer
 13 Defendant the ability to exclude generic drugs produced by other generic manufacturers.

14 221. The most pernicious of all of the Manufacturer Defendants' schemes are
 15 the so-called "conversion services" or "therapeutic interchange programs." Under the
 16 conversion schemes, when patients present prescriptions for drugs not on the formulary,
 17 they are told that those drugs are not available to them and that the prescriptions must
 18 be "converted" to drugs which are available, lest they be denied their benefits or com-
 19 pelled to pay higher prices. Their doctors are then contacted to gain permission to con-
 20

1 vert the prescriptions to the drugs that are on the formularies. All conversions are to
 2 competitive pharmaceuticals which the provider can purchase at a contracted discount or
 3 with respect to which the provider will be paid a rebate, bribe or kickback. While the
 4 physicians may be told that the conversion will save the patient and/or the payor money,
 5 the actual savings, if any, to the patient may be only minimal. The patient is never told
 6 the sole motivation for the conversion is purely economic on the part of the pharmacy
 7 benefit provider. The Manufacturer Defendants have typically paid substantial sums of
 8 money or have deeply discounted prices to those parties who will cooperate in these
 9 conversion schemes. Conversion schemes are little more than consumer fraud.

10 222. These practices permeate the market. They result in increased costs for
 11 prescription drugs for the poor, the elderly, and all those who for one reason or another
 12 may not be eligible for pharmacy benefits. These practices violate consumer protection
 13 laws, the Medicare and Medicaid anti-kickback law, and the Robinson-Patman Act, to
 14 name a few. They are destructive of normal competitive forces. The practices are con-
 15 tinuing to destroy the independent retail pharmacists. An order compelling the Manu-
 16 facturer Defendants to license their patents at reasonable royalty rates to any and all
 17 *bona fide* applicants will open to competition the market, cure the ill effects of the illegal
 18 conduct, and assure the public freedom from continuance of the practices.

CLAIMS FOR RELIEF

COUNT I

(Claim Under Section 2(a) of the Robinson-Patman Act
against the Manufacturer Defendants)

223. Plaintiffs incorporate by reference the averments of paragraphs 1 through 172 above.

224. This count arises under Section 2(a) of the Robinson-Patman Act, 15 U.S.C. § 13(a), and is asserted by all plaintiffs against the Manufacturer Defendants. The Manufacturer Defendants' conduct in selling the same brand name prescription drugs to plaintiffs at a high price and to Favored Purchasers at a much lower price substantially lessens competition and damages plaintiffs. The Manufacturer Defendants' price discrimination prevents plaintiffs and other similarly situated pharmacies from effectively competing with Favored Purchasers. Defendants' conduct is not justified by any legitimate considerations. On the contrary, defendants' price discrimination has the purpose and effect of permitting defendants to limit competition among themselves and to sell their products to Plaintiffs at prices substantially above competitive levels.

WHEREFORE, under this Count I, plaintiffs pray for an Order:

a. Declaring that the Manufacturer Defendants' price discrimination in the sale of brand name prescription drugs is unlawful under Section 2(a) of the Robinson-Patman Act, 15 U.S.C. § 13(a);

b. Permanently enjoining the Manufacturer Defendants from unlawful price discrimination in the sales of brand name prescription drugs by selling such drugs to plaintiffs (and/or to distributors that supply drugs to plaintiffs) at prices above the prices at which the Manufacturer Defendants make the same drugs available to HMO pharmacies and mail-order pharmacies;

1 c. Awarding to plaintiffs three-fold the damages sustained by them as a
2 result of the unlawful price-discrimination of the Manufacturer Defendants;

3 d. Granting to plaintiffs the costs of suit, interest, and reasonable attor-
4 neys' fees; and

5 e. Granting to plaintiffs such other and further relief as may be appro-
6 priate in the circumstances.
7

8
9 COUNT II

10 (Claim Under Section 2(d) of the Robinson-Patman Act
11 Against the Manufacturer Defendants)

12 225. Plaintiffs reaver and incorporate herein by reference the averments of
13 Paragraphs 1 through 172 and 174 above.
14

15 226. This count arises under Section 2(d) of the Robinson-Patman Act, 15
16 U.S.C. § 13(d), and is asserted by all plaintiffs against the Manufacturer Defendants.

17 227. In addition to providing the discriminatory prices and/or rebates described
18 above, the Manufacturer Defendants permit Favored Purchasers, including mail-order
19 pharmacies, to obtain even further discounts or rebates in exchange for providing
20 so-called "conversion services" to these defendants. In exchange for a mail-order phar-
21 macy's agreement to increase its percentage sales of the Manufacturer Defendants' brand
22 name prescription drugs, defendants have provided, and continue to provide, special
23 discounts and/or rebates to Favored Purchasers for converting customers to defendants'
24 brand name prescription drugs and increasing such Favored Purchaser's percentage sales
25 of the defendant's drugs.
26

27 228. For example, defendant SmithKline entered into an arrangement with mail-
28 order pharmacy defendant Medco whereby Medco agreed to actively market Smith-
29 Kline's ulcer drug (Tagamet) in preference to a competing ulcer drug (Glaxo's Zantac).
30
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1 In exchange for Medco increasing its percentage sales of Tagamet, SmithKline gave to
 2 Medco substantial further discounts and/or rebates in addition to those described above.

3 229. Despite demand, the Manufacturer Defendants have failed and refused,
 4 and continue to fail and refuse, to offer plaintiffs the opportunity to provide conversion
 5 services in exchange for discounts or rebates and/or to provide conversion services upon
 6 the same terms as those offered to mail-order pharmacies and other Favored Purchasers.
 7

8 230. The Manufacturer Defendants' provision of discounts and rebates to
 9 Favored Purchasers in exchange for conversion services, coupled with such Manufacturer
 10 Defendants' concerted refusal to offer plaintiffs the opportunity to provide conversion
 11 service in exchange for discounts and/or rebates, has caused plaintiffs to lose sales, reve-
 12 nues, and profits because of their competitive disadvantage to Favored Purchasers with
 13 whom plaintiffs compete; and has insulated Favored Purchasers such as mail-order phar-
 14 macies from vigorous competition.
 15

16 231. Thus, by limiting access to conversion services to Favored Purchasers such
 17 as mail-order pharmacies, the Manufacturer Defendants have lessened competition at
 18 the manufacturer level as well as at the retail level. The result is that the consuming
 19 public, those who buy from mail-order pharmacies as well as those who buy from drug-
 20 stores, pay more for brand name prescription drugs, particularly maintenance prescrip-
 21 tion drugs, than they would pay if the plaintiffs and other non-mail-order pharmacies
 22 were permitted to compete on a level playing field.
 23

24 **WHEREFORE**, under this Count II plaintiffs pray for an Order:

25 a. Declaring that the Manufacturer Defendants' provision of discounts,
 26 rebates, and/or other consideration to Favored Purchasers in exchange for conver-
 27 sion services, coupled with such Manufacturer Defendants' concerted refusal to
 28 offer such discounts, rebates, and/or other consideration to plaintiffs in exchange
 29 for conversion services with respect to the brand name prescription drugs that
 30
 31

1 both plaintiffs and Favored Purchasers purchase from the Manufacturer Defen-
2 dants and their distributors, is unlawful under Section 2(d) of the Robinson-
3 Patman Act, 15 U.S.C. § 13(d);

4 b. Permanently enjoining the Manufacturer Defendants from their
5 discriminatory refusal to offer the discounts, rebates, and/or other consideration
6 in exchange for conversion services to plaintiffs, which the Manufacturer Defen-
7 dants provide to Favored Purchasers such as mail-order pharmacies;

8 c. Awarding to plaintiffs three-fold the damages sustained by them as a
9 result of the unlawful conduct of the Manufacturer Defendants;

10 d. Granting to plaintiffs the costs of suit, interest, and reasonable attor-
11 neys' fees; and

12 e. Granting to plaintiffs such other and further relief as may be appro-
13 priate in the circumstances.

14
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16
17 COUNT III

18 (Claim Under Section 2(f) of the Robinson-Patman Act
19 Against Defendants Medco, Caremark, and Express Pharmacy)

20
21 232. Plaintiffs reaver and incorporate herein by reference the averments of
22 Paragraphs 1 through 172, 174, and 176 through 181 above.

23 233. This count arises under Section 2(f) of the Robinson-Patman Act, 15
24 U.S.C. § 13(f), and is asserted by all plaintiffs against defendants Medco, Caremark, and
25 Express Pharmacy.

26 234. Defendants Medco, Caremark, and Express Pharmacy compete with plain-
27 tiffs in interstate commerce for sales of brand name prescription drugs, including particu-
28 larly maintenance prescription drugs.

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FIRST AMENDED COMPLAINT ADDING
ADDITIONAL PLAINTIFFS AND
DuPONT MERCK PHARMACEUTICAL
COMPANY AS DEFENDANT: 56

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1 235. Upon information and belief, defendants Medco, Caremark, and Express
2 Pharmacy have knowingly induced and/or received from manufacturers of brand name
3 prescription drugs discriminatory prices and/or rebates which are prohibited by Sec-
4 tion 2(a) of the Robinson-Patman Act, 15 U.S.C. § 13(a).

5 236. Defendants Medco, Caremark, and Express Pharmacy have knowingly
6 induced and/or received from numerous manufacturers, including the Manufacturer
7 Defendants, maintenance drugs at substantial discounts (and/or with substantial rebates)
8 from the prices charged by those same manufacturers to plaintiffs (and/or to wholesale
9 distributors that supply drugs to plaintiffs) for the same drugs. These discriminatory
10 prices and/or rebates are not justified by any differing methods or quantities in which
11 such drugs are sold.
12

13 237. Defendant Medco's, defendant Caremark's, and defendant Express Phar-
14 macy's unlawful conduct has caused, and continues to cause, harm to plaintiffs, including
15 losses of sales, revenues, and profits caused by plaintiffs' resulting competitive disadvan-
16 tage.
17

18 **WHEREFORE**, under this Count III plaintiffs pray for an Order:

19 a. Declaring defendant Medco's, defendant Caremark's, and defendant
20 Express Pharmacy's practice of knowingly inducing and/or receiving from manu-
21 facturers prices net of rebates for brand name prescription drugs, particularly
22 maintenance prescription drugs, below those at which those manufacturers sell the
23 same drugs to plaintiffs (and/or to wholesale distributors that supply drugs to
24 plaintiffs) is unlawful under Section 2(f) of the Robinson-Patman Act, 15 U.S.C.
25 § 13(f);
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b. Permanently enjoining defendants Medco, Caremark, and Express Pharmacy from knowingly inducing and/or receiving from manufacturers prices net of rebates for brand name prescription drugs below those at which those manufacturers sell the same drugs to plaintiffs (and/or to wholesale distributors that supply drugs to plaintiffs);

c. Awarding to plaintiffs three-fold the damages sustained by them as a result of the unlawful conduct of defendants Medco, Caremark, and Express Pharmacy;

d. Granting to plaintiffs the costs of suit, interest, and reasonable attorneys' fees; and

e. Granting to plaintiffs such other and further relief as may be appropriate in the circumstances.

COUNT IV

(Claim Under Section 1 of the Sherman Antitrust Act
Against the Manufacturer Defendants)

238. Plaintiffs reaver and incorporate by reference the averments of Paragraphs 1 through 172, 174, 176 through 181, and 183 through 187 above.

239. This count arises under Section 1 of the Sherman Antitrust Act, 15 U.S.C. § 1, and is asserted by all plaintiffs against the Manufacturer Defendants.

240. Manufacturer Defendants' concerted refusal to offer plaintiffs the prices, terms, and conditions offered to Favored Purchasers, including HMO pharmacies and mail-order pharmacies, and their agreements with distributors implementing such refusals, pursuant to which such distributors were effectively precluded from offering certain prices, terms, and conditions to plaintiffs, constitutes an unlawful combination and/or agreement or group boycott in violation of Section 1 of the Sherman Act.

FIRST AMENDED COMPLAINT ADDING
ADDITIONAL PLAINTIFFS AND
DuPONT MERCK PHARMACEUTICAL
COMPANY AS DEFENDANT: 58

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1 241. Manufacturer Defendants' agreements among themselves and with their
2 distributors concerning the prices, terms, and conditions that will be charged to plaintiffs
3 and other independent pharmacies also constitute unlawful price-fixing combinations
4 and/or agreements in violation of Section 1 of the Sherman Act.

5 242. The vertical combinations and agreements asserted herein were entered
6 into in conjunction with, and in facilitation of, the horizontal combinations and agree-
7 ments asserted herein.

8 243. The charge-back agreements entered into between the Manufacturer
9 Defendants and wholesaler distributors as to sales of brand name prescription drugs to
10 Favored Purchasers and the agreements not to offer comparable prices to plaintiffs are
11 unlawful under Section 1 of the Sherman Antitrust Act, 15 U.S.C. § 1.
12

13 244. The concerted action between and among the Manufacturer Defendants in
14 refusing to extend to plaintiffs the discounted prices that those defendants have extended
15 to Favored Purchasers is also unlawful under Section 1 of the Sherman Antitrust Act, 15
16 U.S.C. § 1.
17

18 245. The concerted action between and among the Manufacturer Defendants,
19 and the agreements between Manufacturer Defendants and their distributors, precluding
20 distributors from engaging in arbitrages are also unlawful under Section 1 of the Sher-
21 man Antitrust Act, 15, U.S.C. § 1.
22

23 **WHEREFORE**, under this Count IV plaintiffs pray for an Order:

24 a. Declaring that the concerted action by Manufacturer Defendants in
25 refusing to offer certain advantageous prices, terms, and conditions to plaintiffs is
26 an unlawful group boycott and violates Section 1 of the Sherman Act;
27

28 b. Declaring that the agreements between Manufacturer Defendants
29 and their distributors precluding distributors from offering certain advantageous
30
31

1 prices, terms, and conditions to plaintiffs is an unlawful group boycott and violates
2 Section 1 of the Sherman Act;

3 c. Declaring that the agreements among the Manufacturer Defendants
4 and between the Manufacturer Defendants and their distributors as to what
5 prices, terms, and conditions will be offered plaintiffs are unlawful price-fixing
6 agreements and violate Section 1 of the Sherman Act;

7
8 d. Awarding to plaintiffs three-fold the damages sustained by them as a
9 result of the unlawful conduct of the Manufacturer Defendants;

10 e. Granting to plaintiffs the costs of suit, interest, and reasonable attor-
11 neys' fees; and

12 f. Granting to plaintiffs such other and future relief as may be appro-
13 priate in the circumstances.
14

15
16 COUNT V

17 (Claim Under Section 1 of the Sherman Act and
18 Sections 2(a), 2(d) and 16 of the Clayton Antitrust Act
19 Against the Manufacturer Defendants)

20 246. Plaintiffs reaver and incorporate by reference the averments of Paragraphs
21 1 through 172, 174, 176 through 181, 183 through 187, and 189 through 195 above.

22 247. This count arises under Section 1 of the Sherman Act, 15 U.S.C. § 1 and
23 Sections 2(a), 2(d), and 16 of the Clayton Antitrust Act, 15 U.S.C. §§ 13(a), 13(d) and 26
24 and is asserted by all plaintiffs against the Manufacturer Defendants.

25 248. As a result of the Manufacturer Defendants' actions and violations of the
26 antitrust laws of the United States, plaintiffs have suffered financial losses in the past
27 and continue to suffer financial losses by being charged disproportionate prices for drugs
28 they purchase from the Manufacturer Defendants.
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1 249. The price discrimination and monopolistic behavior arising from the Manu-
 2 facturer Defendants' unlawful activities as more fully described above is expressly pro-
 3 hibited by the antitrust laws of the United States; and the effects of these unlawful activi-
 4 ties (*i.e.*, the disproportionate prices charged the plaintiffs, the losses suffered thereby,
 5 and the harm to competition) are exactly those which the antitrust laws are designed to
 6 prevent.

7
 8 250. The Manufacturer Defendants have refused to discontinue their practice of
 9 price discrimination and other monopolistic behavior and continue to this very day to
 10 charge Plaintiffs grossly disproportionate prices. As such, injunctive relief is necessary to
 11 ensure that the practices of the Manufacturer Defendants are discontinued and will
 12 never be reimplemented.

13
 14 251. Because the Manufacturer Defendants have wholly failed to discontinue
 15 these practices there is a reasonable likelihood that the violations will occur in the
 16 future.

17 252. The losses plaintiffs have suffered flow directly from: (1) the Manufacturer
 18 Defendants' concerted refusals to offer plaintiffs the prices, terms, and conditions offered
 19 to favored purchasers; and (2) the agreements reached between the Manufacturer Defen-
 20 dants and the distributors that implement these refusals.

21
 22 253. The patents issued to the Manufacturer Defendants by the United States
 23 government facilitate the Manufacturer Defendants' violation of the antitrust laws by
 24 allowing the defendants to prevent competitors from manufacturing similar or identical
 25 drugs and then selling those same drugs at reasonable prices to the plaintiffs.

26
 27 254. The combination of the rights of exclusivity granted by the patents and the
 28 unlawful group behavior of the Manufacturer Defendants has precluded the ability of
 29 other drug manufacturers to enter the market, thereby harming competition.

1 255. These patents gave and continue to give the Manufacturer Defendants the
2 economic leverage to coerce and otherwise pressure plaintiffs into accepting their exorbi-
3 tant pricing scheme.

4 256. By economically coercing plaintiffs in the ways described above the Manu-
5 facturer Defendants have correspondingly harmed the public interest by artificially inflat-
6 ing the end cost of pharmaceuticals making them less readily available to prospective
7 purchasers who have little economic or purchasing power.

8 257. In the present case the unlawful activities of the Manufacturer Defendants
9 in conspiring against plaintiffs have allowed the Manufacturer Defendants to evade
10 normal and necessary market constraints. The end result is a harm to competition
11 resulting in grossly inflated prices for pharmaceutical drugs.

12 258. The only means available to eradicate this unlawful scheme and prevent
13 such a situation from happening in the future is to require the Manufacturer Defendants
14 to sell their drugs on reasonable and non-discriminatory terms and to grant patent
15 licenses at reasonable royalty rates to all bona fide applicants.

16 **WHEREFORE**, under this Count V plaintiffs pray for an Order:

17 a. Directing that the Manufacturer Defendants license each and every
18 one of their past, present, and future patents for brand name prescription drugs to
19 any and all applicants on non-discriminatory and reasonable terms and conditions;

20 b. Granting to the plaintiffs the costs of suit and reasonable attorney's
21 fees; and

22 c. Granting to plaintiffs such other and further relief as may be appro-
23 priate in the circumstances.
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JURY DEMAND

Plaintiffs demand trial by jury on all claims for which there is a right to a jury trial.

DATED this 4 day of January, 1995.

LUKINS & ANNIS, P.S.

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FIRST AMENDED COMPLAINT ADDING
ADDITIONAL PLAINTIFFS AND
DuPONT MERCK PHARMACEUTICAL
COMPANY AS DEFENDANT: 63

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FIRST AMENDED COMPLAINT ADDING
ADDITIONAL PLAINTIFFS AND
DuPONT MERCK PHARMACEUTICAL
COMPANY AS DEFENDANT: 64
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